

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

)	
)	
SID MILLER, <i>et al.</i> , on behalf of themselves)	
and others similarly situated,)	
)	
Plaintiffs,)	
)	Civil Action No. 4:21-cv-595-O
v.)	
)	
TOM VILSACK, in his official capacity as)	
SECRETARY OF AGRICULTURE,)	
)	
Defendant.)	

**DEFENDANT’S BRIEF IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

At the height of a global pandemic, with many Americans reeling from financial disruption, Congress enacted a broad economic relief program, the American Rescue Plan Act. Among its components, that act provided debt relief to certain minority farmers. Congress recognized that minority farmers were disproportionately likely to face foreclosure or other financial calamities, and that these conditions, among others, were attributable at least in part to prior discrimination by the government itself. Congress had a compelling interest, long recognized in Supreme Court precedent, in remedying the lingering effects of the government's own prior discriminatory acts. And the program Congress designed is narrowly tailored to advance that interest, providing one-time relief within the very programs where discrimination was most pernicious. The Court should reject the Plaintiffs' attempts to deny much-needed debt relief to minority farmers and should enter judgment for the Government. Alternatively, if the Court concludes that the provision is not constitutional, it should order the ordinary remedy for such a finding by expanding the program to include non-minority farmers.

BACKGROUND

I. Section 1005 of the American Rescue Plan Act

The American Rescue Plan Act (ARPA) provides widespread pandemic relief to the American people. *See* Pub. L. No. 117-2, 135 Stat. 4 (2021). The House Report shows that Congress was focused in particular on helping the “most vulnerable communities” who were “forced to bear the brunt of” the pandemic and resultant economic crisis “as underlying health and economic inequities gr[e]w worse.” H.R. Rep. No. 117-7, at 2 (2021), <https://perma.cc/CH87-MWNL>. Among those whom Congress sought to aid were minority farmers, a group which had “received a disproportionately small share of the farm loans and payments administered by USDA as a result of . . . longstanding and widespread discrimination.” *Id.* at 12.

During its deliberations, Congress considered evidence that chronicled a history of discrimination against minority farmers by the USDA officials who administer the Department's farm loan and other financial benefits programs. *See* 167 Cong. Rec. H762, H765-66 (daily ed. Feb. 26, 2021),

<https://perma.cc/X3TK-44BW> (discussing evidence); 167 Cong. Rec. S1219, S1262-67 (daily ed. March 5, 2021), <https://perma.cc/7U6Z-6S7B> (same). The evidence detailed how discrimination prevented minority farmers from participating in these USDA programs, which contributed to a considerable loss of minority-owned farmland over a sustained period of time. *See, e.g., id.* at S1262-67. And the evidence illustrated how the effects of that discrimination linger today. *Id.* Various reports showed that minority farmers struggle to obtain credit and are at a significant financial disadvantage relative to non-minority farmers. *Id.* Current statistics further revealed to Congress that a disproportionately high number of minority farmers are in default and on the brink of losing their farms. *Id.* at S1265-66; *infra* Part I.B.

Congress concluded that minority farmers needed urgent relief to prevent a “wave of foreclosures” and to escape the cycle of debt that precludes them from fully participating in the farming economy. 167 Cong. Rec. S1266. Past remedial measures, Congress determined, had “fallen short.” *Id.* at S1262. Even recent, robust agricultural relief efforts had largely failed to reach minority farmers and only exacerbated pre-existing disadvantages. *Id.* at S1264-65. Congress observed that minority farmers’ lack of trust in USDA because of past experiences with discrimination added still another obstacle to overcoming existing barriers. *Id.* at S1264. At the same time, Congress found that the economic crisis caused by the pandemic, which disproportionately affected minorities, threatened to push many more minority farmers out of the business altogether. *Id.* at 1265-66.

In response to these findings, Congress included in ARPA a provision specifically addressed to the plight of minority farmers: § 1005. That section appropriates “such sums as may be necessary, to remain available until expended,” to pay up to 120 percent of certain direct or guaranteed USDA farm loans held by a “socially disadvantaged farmer or rancher” (SDFR) and outstanding as of January 1, 2021. *See* ARPA § 1005. Congress defined SDFR by cross-reference to the definition in 7 U.S.C. § 2279(a), which provides that a SDFR is a “a farmer or rancher who is a member of” a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities,” *id.* § 2279(a)(5)-(6).

USDA has long interpreted “socially disadvantaged group[s]” to include the following five minority¹ groups: American Indians or Alaskan Natives; Asians; Blacks or African Americans; Hispanics or Latinos; and Native Hawaiians or other Pacific Islanders. *See, e.g.*, 66 Fed. Reg. 21617-01 (Apr. 30, 2001); 74 Fed. Reg. 31567 (July 2, 2009); 75 Fed. Reg. 27165 (May 14, 2010). The Department carried that interpretation forward in implementing § 1005. *See* Notice of Funds Availability; ARPA 2021 § 1005 Loan Payment, 86 Fed. Reg. 28,329 (May 26, 2021) (“NOFA”).²

Section 1005-eligible recipients need not affirmatively apply to receive relief, but they must formally respond to USDA’s notification letter to accept and receive the payment. Expert Report of William D. Cobb ¶ 73 (“Cobb Rpt.”) (attached as Exhibit A). USDA continues to identify and notify individuals who are eligible to receive debt payments under this NOFA, although USDA is not presently disbursing payments because of court orders in this and related litigation. *Id.* ¶ 76.

II. USDA’s Farm Service Agency

The Farm Service Agency (“FSA”)³ within USDA administers the Department’s farm loan and related agricultural benefit programs, including the loans that qualify for debt relief under § 1005. Cobb Rpt. ¶¶ 11-14. FSA makes credit available to farmers who cannot obtain credit on reasonable terms from commercial institutions by making loans directly to farmers, *id.* ¶¶ 15-16, or by guaranteeing commercial loans up to 95%, *id.* ¶¶ 15, 48. Farmers may use these loans for buying or improving farm property, operating their farms, or resuming operations after a disaster, among other things. *Id.* ¶¶ 13-14. In the past, county-level officials administered farm loans in conjunction with FSA, although their role in FSA loan programs has changed over the years due to structural reforms at USDA; they presently play a more limited role in USDA farm lending programs. *See id.* ¶¶ 28, 40, 64. FSA also provides loan servicing, which allows borrowers who are unable to make scheduled loan payments to change their loan repayment schedule so that they may “maintain[] and continu[e] farm

¹ Defendant uses “minority farmers” or “SDFRs” to refer to farmers considered “socially disadvantaged” under § 1005 and “non-minority farmers” to refer to non-Hispanic white farmers.

² The NOFA also provided that the Secretary would consider other groups for inclusion in the definition of SDFR on a case-by-case basis in response to a written request. The Secretary has not yet made a determination on any such request.

³ FSA’s predecessor is the Farmers Home Administration (“FmHA” or “FHA”).

operations and” obtain future credit. *Id.* ¶¶ 12, 24.

III. Plaintiffs’ Lawsuit and Related Section 1005 Challenges

Plaintiffs represent a class of farmers who hold USDA farm loans that they allege would be eligible for debt relief under § 1005 but for the fact that they do not fall within one of the minority racial or ethnic groups considered “socially disadvantaged.” *See generally* Third Am. Compl., ECF No. 135; Order on PI & Class Cert., ECF No. 60. They bring a claim under the Constitution, alleging that § 1005 violates the equal protection component of the Fifth Amendment’s Due Process Clause. Third Am. Compl. ¶¶ 20-23. As relief, they seek an injunction prohibiting Defendant from “implementing any racial exclusions or discriminatory racial preferences” in Section 1005. *Id.* ¶ 32.

This case is one of twelve similar equal protection challenges to § 1005 filed in jurisdictions around the country. *See Kent v. Vilsack*, 21-cv-540 (S.D. Ill.); *Faust v. Vilsack*, 1:21-cv-548 (E.D. Wis.); *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.); *Carpenter v. Vilsack*, 21-cv-103 (D. Wyo.); *Holman v. Vilsack*, 1:21-cv-1085 (W.D. Tenn.); *McKinney v. Vilsack*, 2:21-cv-212 (E.D. Tex.); *Joyner v. Vilsack*, 1:21-cv-1089 (W.D. Tenn.); *Dunlap v. Vilsack*, 2:21-cv-942 (D. Or.); *Rogers v. Vilsack*, 1:21-cv-1779 (D. Colo.); *Tiegs v. Vilsack*, 3:21-cv-147 (D.N.D.); *Nuest v. Vilsack*, 21-cv-1572 (D. Minn.). In three of the cases, including this one, courts have entered preliminary injunctions prohibiting USDA from disbursing any § 1005 funds. Order on PI & Class Cert.; PI Order, *Wynn*, ECF No. 41; PI Order, *Holman*, ECF No. 41.⁴

On July 1, 2021, this Court certified two classes under Federal Rule of Civil Procedure 23(b)(2). Order on PI & Class Cert. The classes both challenge § 1005 on equal protection grounds and seek an injunction preventing the Government from implementing racial exclusions or preferences when administering § 1005. Third Am. Compl. ¶ 32.

LEGAL STANDARD

Under this Court’s scheduling order, Defendant moves for summary judgment for Defendant, and Plaintiffs will simultaneously move for summary judgment for the classes. *See* Order, ECF No.

⁴ The *Faust* court had also entered a temporary restraining order (TRO) that prohibited disbursement of § 1005 funds but dissolved the TRO after the *Wynn* court issued a preliminary injunction. Order, *Faust*, ECF No. 49.

85. On cross-motions for summary judgment, each motion is treated separately under the standards applicable to each. *See Playa Vista Conroe v. Ins. Co. of the W.*, 989 F.3d 411, 414 (5th Cir. 2021). Summary judgment is warranted when “the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A material fact is one identified by the substantive law as affecting the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue exists, and summary judgment is inappropriate, when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

Because § 1005 uses a race or ethnicity classification, it is subject to strict scrutiny and “it is the government that bears the burden to prove” that its policy is constitutional at the outset. *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 310 (2013). Once the government has satisfied that burden by presenting evidence at summary judgment, the burden shifts to the plaintiff to “to show a genuine issue of material fact as to whether the [government] defendants had a substantial basis in evidence for adopting their [remedial] programs.” *Midwest Fence Corp. v. U.S. Dep’t of Transp.*, 840 F.3d 932, 952 (7th Cir. 2016). As a rule, the party challenging the program “bears the ultimate burden of demonstrating that the racial classification is unconstitutional.” *Walker v. City of Mesquite*, 169 F.3d 973, 982 (5th Cir. 1999) (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277-78 (1986) (per curiam)).

ARGUMENT

I. Section 1005 is constitutional

Congress enacted § 1005 to serve a compelling interest: remedying the lingering effects of well-documented historical discrimination in administering USDA’s farm loan programs. Section 1005 is narrowly tailored to advance that interest by providing one-time relief on FSA-administered debt to members of those groups who suffered because of USDA’s prior discrimination. Under the applicable legal standards, § 1005 is consistent with the equal protection principles of the Fifth Amendment. Plaintiffs cannot carry their burden of proving that the program is unconstitutional.

A. The contours of review under strict scrutiny

The strict scrutiny analysis proceeds in two parts: first, whether the government’s action is in

service of a compelling interest, and, second, whether the action is narrowly tailored to serve that interest. *See, e.g., Dean v. City of Shreveport*, 438 F.3d 448, 454 (5th Cir. 2006).

As the Supreme Court has repeatedly affirmed, it is “well settled that the government has a compelling interest in remedying its own past discrimination.” *Id.* (citing *United States v. Paradise*, 480 U.S. 149, 167 (1987)); *see also Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237 (1995) (“The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.”); *Wygant.*, 476 U.S. at 288 (opinion of O’Connor, J.) (similar); *Paradise*, 480 U.S. at 167 (similar).

Crucially, Congress’s determination that a remedial measure is warranted to advance such a compelling interest is entitled to deference. *See, e.g., Fisher v. Univ. of Tex. at Austin* (“*Fisher IP*”), 136 S. Ct. 2198, 2208 (2016) (reiterating that “some, but not complete, judicial deference is proper” with regard to government’s compelling interest judgment) (citation omitted); *Fisher v. Univ. of Texas at Austin*, 758 F.3d 633, 642 (5th Cir. 2014), *aff’d*, 579 U.S. 365 (2016); *see also Petit v. City of Chicago*, 352 F.3d 1111, 1114 (7th Cir. 2003) (giving deference to police about need for diversity). The focus of the inquiry is whether there was sufficient evidence for Congress to conclude that a remedial measure was warranted. *Dean*, 438 F.3d at 455 (5th Cir. 2006) (inquiry is limited to “a factual determination that there was a strong basis in evidence for the conclusion that remedial action was necessary”). The Court thus does not decide for itself whether a remedial program is warranted, but instead asks only whether there was “a strong evidentiary basis” to support Congress’s determination. *Id.*; *see also Wygant*, 476 U.S. at 289-90 (opinion of O’Connor, J.); *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 241 (4th Cir. 2010) (“[A] ‘state need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.’”); *Midwest Fence*, 840 F.3d 945 (similar); *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994) (holding that the Constitution “does not require a court to make an ultimate judicial finding of discrimination before a municipality may take affirmative steps to eradicate discrimination”); *Citizens Concerned About Our Child. v. Sch. Bd. of Broward Cnty., Fla.*, 193 F.3d 1285, 1293 (11th Cir. 1999)

(compelling interest could be demonstrated by “sufficient evidence” available to the governmental entity “to justify the conclusion that there ha[d] been prior discrimination” (citation omitted)); *cf. Ricci v. DeStefano*, 557 U.S. 557, 580-81 (2009) (same, under Title VII).

Although “[t]he Supreme Court has offered little guidance as to how much evidence of past discrimination is required,” *Dean*, 438 F.3d at 454, “there is no doubt that . . . gross statistical disparities . . . alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination.” *Id.* (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 501 (1989)). And “the combination of anecdotal and statistical evidence is potent.” *Contractors Ass’n of E. Pa., Inc. v. City of Philadelphia*, 6 F.3d 990, 1003 (3d Cir. 1993) (citation omitted); *see also Dean*, 438 F.3d at 456 (statistical evidence bolstered by admission of past discrimination, numerous lawsuits alleging discrimination, and absence of alternative explanation for disparities); *Midwest Fence*, 840 F.3d at 952–53 (statistical evidence bolstered by anecdotal evidence); *Majeske v. City of Chicago*, 218 F.3d 816, 822 (7th Cir. 2000) (similar); *Rotbe Dev. Corp. v. Dep’t of Def.*, 545 F.3d 1023, 1046 (Fed. Cir. 2008) (similar).

As to narrow tailoring, “[t]he means chosen to accomplish the [government’s] asserted purpose must be specifically and narrowly framed to accomplish that purpose.” *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003) (citation omitted). But “[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative.” *Fisher II*, 136 S. Ct. at 2208 (quoting *Grutter*, 539 U.S. at 339); *cf. Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 454 (2015) (holding that strict scrutiny requires that government regulation “be narrowly tailored, not that it be ‘perfectly tailored.’” (citation omitted)). Although the narrow tailoring inquiry varies with context, some important factors are “the necessity for the relief and the efficacy of alternative remedies”; the “flexibility and duration of the relief”; and the “impact of the relief on the rights of third parties.” *Paradise*, 480 U.S. at 171; *see also Dean*, 438 F.3d at 458 (endorsing and applying *Paradise* factors).

The “ultimate burden” remains on the plaintiff “to demonstrate unconstitutionality.” *Wygant*, 476 U.S. at 277. Thus, once the government “has shown acceptable proof of a compelling interest in remedying past discrimination and illustrated that its plan is narrowly tailored to achieve this goal,” the burden shifts to the plaintiff to prove that the remedial plan is unconstitutional. *Majeske*, 218 F.3d

at 820.

B. Section 1005 is supported by a compelling interest

Congress enacted § 1005 to remedy the lingering effects of past discrimination against minority farmers⁵ in the administration of USDA loan programs. 167 Cong. Rec. S1264-65 (“Congress includes the[] measures [in § 1005] to address the longstanding and widespread systemic discrimination within the USDA, [and] particularly within the loan programs, against [SDFRs].”); H.R. Rep. No. 117-7, at 12 (“Black farmers and other agricultural producers belonging to racial or ethnic minority groups have received a disproportionately small share of the farm loans and payments administered by USDA as a result of the longstanding and widespread discrimination against these groups.”); Opening Stmt. of Sec’y of Agric. Thomas J. Vilsack before House Comm. on Agric. (Mar. 25, 2021), <https://perma.cc/3LWV-4SMF> (“[Section 1005] provides debt relief for [SDFRs] to respond to the cumulative impacts of systemic discrimination and barriers to access that have created a cycle of debt.”).

Congress’s conclusion that such an interest existed here was amply supported by a “strong evidentiary basis.” *Dean*, 438 F.3d at 455. This evidence is detailed in the expert reports of Dr. Alicia Robb, *see* Expert Report of Alicia M. Robb, Ph.D. (“Robb Rpt.”) (attached as Exhibit B), and of William Cobb, Deputy Administrator for Farm Loan Programs for the FSA, *see* Cobb Rpt. The evidence shows the following. First, it is well documented that FSA itself historically engaged in discriminatory practices with devastating effects on minority farmers. Second, more recent analysis establishes that the effects of that past discrimination persist in the present day, in the form of smaller farms, lower capitalization, higher debt ratios, and greater financial instability, including higher rates of delinquency and foreclosure, for minority farmers. Third, past remedial efforts have failed to address these lingering effects and in some instances only exacerbated them.

1. The well-established evidence of historic discrimination in USDA loan programs

Congress emphasized that evidence of past discrimination in USDA farm loan and related agricultural financial assistance programs is “longstanding and well-documented,” 167 Cong. Rec.

⁵ For ease of reference, Defendant uses “farmers” to include “farmers and ranchers.”

H765. Indeed, other courts, reviewing some of the evidence that was before Congress, have found that USDA's unfortunately "dark history of past discrimination against minority farmers" is "undeniable." *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1279 (M.D. Fla. 2021); *see also Holman v. Vilsack*, No. 21-1085, 2021 WL 2877915, at *6 (W.D. Tenn. July 8, 2021) ("It is undisputed that the USDA has a sad history of discriminating against certain groups of farmers based on their race."). Even Plaintiffs do not dispute that USDA has discriminated against minority farmers in the past. *See generally* Pls.' PI Reply Br. at 7, ECF No. 42 (contending only that there is no evidence of intentional discrimination in more recent programs).

The evidence illustrates that discrimination against each minority group "manifested in many ways throughout the loan cycle"—from outreach and education about loans, to assistance with loan applications, to processing and approval of applications, to disbursement of funds, to loan servicing availability—and contributed to a substantial diminution in minority farms and generational wealth over decades. Robb Rpt. at 2. The evidence also shows that FSA consistently—and sometimes deliberately—ignored these complaints, which were widely known for decades. *Id.* at 26 (citing complaints of officials throwing claims in the trash, as documented in a 2011 report).

As early as 1965, the U.S. Commission on Civil Rights (USCCR) found that the Farmers Home Administration—FSA's predecessor—was discriminating against Black farmers by providing them inferior loans in terms of size, technical assistance, and the "purposes for which the loans [were] to be used." USCCR, *Equal Opp'y in Farm Programs* at 67-82 (1965), <https://perma.cc/34HP-5V9P> ("1965 Rpt.") (explaining that FmHA, which "play[ed] a vital role in helping [farmers] decide the uses for which [FmHA] funds would be put," gave poor non-minority farmers substantially more loans to "acquire or expand their farms," or improve "their financial position" in other ways, than it gave to minority farmers); *see also* USCCR, *The Decline of Black Farming in Am.*, at 9, 167 (1982), <https://perma.cc/CFE9-ANJ3> ("1982 Rpt.").⁶ By 1997, Black, Hispanic, Asian, and American Indian

⁶ In its preliminary injunction order, the Court referenced the FmHA's inability "to make loans for social purposes" as a point ostensibly undercutting the government's evidence of prior discrimination in USDA's farm lending programs. Order on PI & Class Cert. at 16 (quoting 1982 Rpt. at 19 (1982)).

farmers were voicing complaints about repeated discriminatory actions by FSA in all areas of loan administration. The Civil Rights Action Team (CRAT), commissioned by the Secretary of Agriculture, recounted their stories, which told how FSA: failed to provide assistance with loan applications; intentionally delayed the application and approval processes; arbitrarily reduced loan amounts; never provided a promised loan; failed to provide loan servicing options; and forced the sale of land or foreclosure, among other things. CRAT, Civil Rights at the USDA, at 15-16 (1997), <https://perma.cc/5DNF-PFJY> (“CRAT Rpt.”).⁷ The USDA’s Office of Inspector General (OIG) similarly reported that FSA failed to provide minority farmers with loan servicing options at the same rate as non-minority farmers. USDA OIG, Minority Participation in FSA’s Farm Loan Programs – Phase II, at 29 (1997), <https://perma.cc/YGY6-YE5X> (noting further that minority farmers failed to receive the full benefit of loan servicing even though FSA was congressionally *mandated* to “restructure delinquent farm program loans to the maximum extent possible”); *see also* Robb Rpt. at 29-34 (discussing the reports’ findings).

The consequences of these actions were significant. Delayed, reduced, or never-provided loans prevented minority farmers from procuring necessary supplies in time for planting seasons or left them wholly unable to pay back debts for supplies and equipment. *See, e.g.*, Robb Rpt. at 2-5, 16-38, 84-85. And lack of technical assistance—a crucial component of FSA’s loan programs—left minority farmers unable to “modify their practices [so] that their farms [could] become economically viable.”

But the USCCR’s comment on FmHA’s inability to provide loans for social purposes concerned the limits of FmHA’s authority to take certain actions aimed at *remedying* the effects of its own earlier discrimination against minority farmers. *See* 1982 Rpt. at 19 n.27. The Report discusses that underlying discrimination at length. *Id.* at 91-105. As the USCCR explained, FmHA’s loan application process required officials to make subjective assessments of creditworthiness to determine eligibility for loans, which opened the door to the very types of discrimination in the application process that is documented throughout the evidence before Congress. According to the USCCR’s study, such discrimination led to minority farmers “receiv[ing] only a very small proportion, 2.5 percent, of the total dollar amount loaned through FmHA’s farm credit programs in 1981.” *Id.* at 133; *see also* Robb Rpt. at 22-24 (discussing the 1982 USCCR Report in greater detail).

⁷ The CRAT reviewed civil rights complaints against USDA, held listening sessions with Black, Hispanic, Asian American and American Indian farmers, and produced a report that summarized its findings and recommended solutions. *Id.* at 3.

1965 Rpt. at 79. As a result, many minority farmers found it “impossible . . . to earn any money from the[ir] farm” and were forced to sell the land or face foreclosure. CRAT Rpt. at 16. Minority farmers lost “significant amounts of land and potential farm income.” *Id.* at 30; 1982 Rpt. at 176, 179 (discrimination by FmHA contributing to the “tragic decline of black farms”); Robb Rpt. at 31-32.

A series of lawsuits brought by African American, Native American, and Hispanic farmers reiterated those same widespread complaints of discrimination against FSA.⁸ Robb Rpt. at 24-26 (discussing the lawsuits); Cobb Rpt. ¶¶ 31-37. In these lawsuits—*Pigford I & II*, *Keepseagle*, and *Garcia*—minority farmers alleged that FSA officials in the 1980s and 1990s refused to offer assistance with loan applications or treated minority farmers with hostility when they sought assistance; arbitrarily denied loan applications; administered loans late, after “planting season was over” and when they were “virtually useless”; placed loans in “supervised” accounts requiring the signature of a (typically white) county supervisor before funds could be withdrawn; and failed to advise them of loan servicing options; among other things. *See* Robb Rpt. at 24-26; *see also In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 8 (D.D.C. 2011) (the allegations, “though broad in scope, were no exaggeration”). Because of the lawsuits, USDA created administrative claims processes whereby these minority farmers could recover limited debt relief or monetary damages for substantiated claims of discrimination.⁹ Robb Rpt. at 27-28 (explaining the two-track claims process whereby claimants could show discrimination under a “substantial evidence” or a “preponderance of the evidence” standard); Cobb Rpt. ¶¶ 33-38 (discussing the claims process). In total, USDA paid approximately \$2.25 billion in combined cash payments, debt relief, and tax payments for successful claimants.¹⁰ Robb Rpt. at 27-28.

And yet subsequent congressional hearings and investigative reports showed Congress that the effects of discrimination persisted. Both during and after implementation of these settlements and

⁸ *See Pigford v. Glickman* (“*Pigford P*”), Civ. No. 97-1978 (D.D.C.) (African Americans); *In re Black Farmers Discrimination Litigation* (“*Pigford II*”), Misc. No. 08-mc-0511 (D.D.C.) (same); *Keepseagle v. Glickman*, Civ. No. 99-03119 (D.D.C.) (Native Americans); *Garcia v. Glickman*, Civ. No. 00-2445 (D.D.C.) (Hispanics).

⁹ The claims processes were established by a settlement agreement in *Pigford I* and *II* and *Keepseagle*, and later through a voluntary alternative to litigation for Hispanics in *Garcia*. Cobb Rpt. ¶¶ 33-37.

¹⁰ Debt relief constituted a very small proportion of these payments. Cobb Rpt. ¶ 38; *infra* Part I.B.3.

claims processes, Congress heard directly from Black, Hispanic, and Native American farmers who told grueling accounts of their experiences with USDA. In one hearing, a Black farmer complained of county-level officials repeatedly delaying the processing and disbursement of multiple farm loans, including by denying access to application forms. As a consequence, she and her husband lost 500 piglets, who died because they were unable to purchase “an adequate facility” for their hogs “to deliver and care for their offspring.”¹¹ Another Hispanic farmer told of being denied relief after a series of natural disasters because—according to county officials—she and her family “were bad farmers,” which eventually led to foreclosure.¹² A Native American farmer testified to FSA’s repeated refusal to offer the assistance necessary to complete loan applications.¹³ Other minority farmers have shared that past discrimination discouraged them from seeking USDA’s help.¹⁴ *See also* Robb Rpt. at 36-37 (discussing the hearings).

Around the same time, an outside firm contracted by USDA conducted a multi-year investigation and published a report in 2011 documenting ongoing problems with discrimination at the agency. It concluded that at USDA—and in FSA in particular—“the deck was always stacked” against minority farmers because discrimination had become ingrained in the agency’s programs. Jackson Lewis LLP, Civil Rights Assessment, Final Report, at iii, viii (Mar. 31, 2011), <https://perma.cc/8X6Q-GZ5V> (“JL Rpt.”).¹⁵ The firm heard complaints from minority farmers that they were treated “like dirt” and unfairly denied the same loan assistance provided to non-minority farmers. *Id.* at 84-86 (recording anecdotes from Black, Asian, Hispanic, and Native American farmers who complained of having loan applications denied for “fabricated” reasons, not providing accurate

¹¹ Hr’g on the USDA’s Civil Rights Prog. for Farm Prog. Participants before House Sub-comm., Dep’t Ops., Oversight, Nutrition, and Forestry, Comm. on Agric., 107th Cong. 48-50 (2002), <https://perma.cc/PN24-BXPP> (“2002 Hr’g”).

¹² Robb Rpt. at 36.

¹³ Hr’g on Management of Civil Rights at the USDA before House Sub-comm., Gov’t Management, Organization, and Procurement, Comm. on Oversight and Gov’t Reform, 110th Cong. 19 (2008), <https://perma.cc/ZAK3-6PRC>.

¹⁴ *See, e.g.*, 2002 Hr’g at 66.

¹⁵ The JL Report included women in its discussion of SDFRs, *id.* at 66 n.33, but the evidence here, and discussed by Congress, relates only to the minority racial groups included in that definition.

information about loan applications, delaying processing of applications until there were “no funds left,” among other things); *see also id.* at 63-64 (finding that USDA’s own documents and data supplied to JL substantiated in part the anecdotes of discrimination). These actions “had a broad and longstanding negative impact on the size, profitability, sustainability, business prospects, successes, and failures of” minority famers, and on many occasions led to “the loss of scarce or irreplaceable farm lands.” *Id.* at 64; Robb Rpt. at 34-36.

2. *The persistent effects of past discrimination in USDA loan programs*

In January 2021, Congress determined that the “cumulative effect[s]” of past discrimination at USDA persisted and necessitated urgent relief. 167 Cong. Rec. S1265. Congress had a strong basis in evidence for that conclusion. The reports and statistical disparities considered by Congress, and further buttressed by the expert reports of Dr. Robb and Mr. Cobb, show how USDA’s past discrimination has caused severe loss of land and of generational wealth, depriving minority farmers of the resources necessary to develop their farms and putting them disproportionately on the brink of foreclosure—and at an especially precarious time, in the midst of a pandemic.

To start, the evidence shows that past discriminatory practices have pushed many minorities out of farming altogether such that, today, minorities are substantially underrepresented in farming. Reports before Congress showed that even when minority farmers “did receive loans or payments, many of them were not provided timely or proper loan servicing options due to discrimination, which led to producers of color losing their land and operations.” 167 Cong. Rec. H765. And Congress cited dire statistics revealing a significant decrease in Black farmers over the last century—down from 15% to 2% of all farmers nationwide. 167 Cong. Rec. S1265 (“Black farmers have lost between 15 and 20 million acres of land” over “the past century.”). Dr. Robb confirms that “[b]ecause farmers turn to USDA as a ‘lender of last resort,’ discriminatory loan practices can force minorities out of farming altogether.” Robb Rpt. at 41. And she confirms that the statistics are grim across the board: All minority groups have substantially fewer farms¹⁶ today than would be expected, especially given their

¹⁶ The USDA census data analyzed by Dr. Robb presents statistics about farm “producers,” which is defined to include farm owners and others “involved in making decisions for the farm operation . . .

increasing percentage of the population. *Id.* at 50-55 (analyzing data showing that, in rural Texas, for instance, Hispanics account for 31.6% of the population but only 11.3% of the farms; Blacks account for 7.8% of the population but only 3.2% of the farms; and non-minorities account for 58.6% of the population but 95.5% of the farms). By contrast, non-minority farmers—who historically did receive support from USDA—dominate the industry today, even while their population share is declining. *Id.*

This massive loss in minority farmland, the Congressional record explains, represents “hundreds of billions of dollars of generational wealth.” 167 Cong. Rec. S1265; *id.* S1262 (discussing a Tufts University analysis estimating “the value of that lost [Black] farmland at more than \$120 billion in lost opportunities”). Minority farmers who have remained in or later entered (or re-entered) the farming business are experiencing the repercussions of those generational financial losses. As data analyzed by Dr. Robb illustrates, minority farms are generally smaller in size and bring in less income compared to non-minority farms. As to farm size, some disparities are particularly stark—in the states having the highest percentage of Asian and Black farmers, non-minority “farms are between 129% and 336% larger than Asian farms,” on average, and “between 103% and 347% larger than Black farms.” Robb Rpt. at 64 (explaining that American Indian/Alaskan Native and Native Hawaiian/Pacific Islander farms are also “significantly smaller” than non-minority farms in almost every state where farmers from these minority groups are most heavily concentrated). And as to income, all minority groups are at a marked disadvantage across virtually every income metric, including market value of production, government payments received, net farm income, per-acre market value of farms, and farmers’ overall wealth. *Id.* at 66-70. These disparities are a “natural consequence of past discrimination in lending practices, which hindered minority farmers seeking to expand or invest in their farms.” *Id.* at 55-56.

This evident diminution of minority farms, caused by discrimination, has persistent effects that threaten to keep minority farmers trapped in a cycle of debt and at a continued disadvantage in

about such things as planting, harvesting, livestock management, and marketing”). Robb Rpt. at 46 n.149 (quoting 2017 Ag. Census, App’x B at 19, <https://perma.cc/J3ZW-TPAG>). Throughout this brief, Defendant refers to “producers” as “farmers,” and they use the terms “Black farms,” “white farms,” “Asian farms,” etc., to refer to the farms with producers of that race/ethnicity.

the future. *Id.* at 90-107. Congress observed several of these persistent effects, and the data analyzed by Dr. Robb confirms their existence.

First, because minority farmers have been inhibited in developing their farms over time, they have not been able to accumulate the wealth and collateral necessary to access private credit at the same rate as non-minorities. Multiple Government Accountability Office (GAO) reports before Congress explained that USDA discrimination has hindered minority farmers' ability to "expand operations and . . . purchase land and equipment that can later be used as collateral," and thereby frustrated those farmers' opportunities to obtain "subsequent and larger loans" from USDA and in the private credit market. GAO-19-539, *Agric. Lending: Info. on Credit & Outreach to [SDFRs] Is Limited*, at 29 (July 2019), <https://perma.cc/5RD6-24VH>; *see also* 167 Cong. Rec. S1265 (discussing 2008 and 2019 GAO reports "highlight[ing] [how] historic, systemic discrimination against [minority] farmers" made it more difficult for them to obtain farm loans); Robb Rpt. at 100-01 (explaining that collateral, farm size, and farm revenue each "affect a farmer's ability to obtain private credit," and that discrimination at USDA has negatively affected minority farmers "with respect to all three factors, [and] consequently impeded [such farmers'] ability" to acquire private credit). This undermines minority farmers' efforts to realize a primary purpose of USDA's loan programs: to "graduate" from USDA direct loans to guaranteed loans and, eventually, non-USDA-backed private loans. Robb Rpt. at 100, 3; Cobb Rpt. ¶ 20.

Second, "because minority farmers generally have smaller farms," they tend to "receive a disproportionately small share of funds provided through USDA payment programs, many of which . . . are based on crop-acreage or are targeted to crops typically grown on large farms." Cobb Rpt. ¶ 52. The House Report accompanying ARPA states that "[t]he USDA spends billions of dollars annually to provide crucial support to American agricultural producers," but those "belonging to racial or ethnic minority groups have received a disproportionately small share of the farm loans and payments administered by USDA as a result of the longstanding and widespread discrimination against these groups." H.R. Rep. No. 117-7, at 12. Past congressional hearings had highlighted this issue to Congress with respect to certain USDA programs. *See, e.g.*, Hr'g on USDA Oversight, 114th Cong.

32-33, 49-50 (2015), <https://perma.cc/2PJU-ZRLE> (testimony from Secretary Vilsack that export markets favored “large scale” agriculture businesses, such that export growths were unlikely to substantially benefit minority farmers who generally have much smaller farms). In deliberations preceding ARPA’s passage, Congress considered the issue again. A letter by a group of agriculture scholars introduced into the ARPA congressional record explains how the Government’s pattern, through its payment programs, of “reward[ing] the largest farms the most” has naturally excluded minority farmers and caused them to “fall further behind.” 167 Cong. Rec. S1266. Dr. Robb’s analysis corroborates these findings, as the data in her report shows that each minority group has received less in government payments relative to their share of farms,¹⁷ despite generally being in disproportionate need of assistance. Robb Rpt. at 95-99. She likewise concludes that this pattern of disproportionate funding is “likely due in no small part to the historical discrimination in USDA loan programs that ha[s] deprived minority farmers of necessary credit and services” and led to their having smaller farms. Robb Rpt. at 89; *see also* Cobb Rpt. ¶ 53 (noting that minority farmers “have not had the same access to credit to increase the size of their operations” and have “less generational wealth”).

In deliberations leading to § 1005’s passage, evidence before Congress showed that this pattern was repeated through the Government’s recent payment programs intended to assist farmers struggling because of trade tariffs or the pandemic. One report cited by Congress showed that 99% of Market Facilitation Program (MFP)¹⁸ funds and 97% of Coronavirus Food Assistance Program (CFAP)¹⁹ funds went to non-minority farmers. *See* 167 Cong. Rec. S1264-65.²⁰ The disproportionate

¹⁷ For some groups the difference is substantial: Hispanic farmers, for instance, have received only 1.4% of government payments even though they make up 3.8% of farms. For Native Hawaiian/Pacific Islander farms, the difference is marginal, but because they account for such a small share of farms (0.1% of farms nationwide), the comparison is less meaningful. *See* Robb Rpt. at 96.

¹⁸ In 2018 and 2019, FSA was authorized to distribute up to \$23.1 billion through MFP to producers affected by foreign retaliatory trade practices. “These were the largest payments made for USDA emergency assistance programs within the recent decade.” Cobb Rpt. ¶ 59 n.7.

¹⁹ CFAP was created in 2020 to assist agricultural producers impacted by the effects of COVID-19. <https://perma.cc/B7N9-PTRE>; Cobb Rpt. ¶ 59.

²⁰ Dr. Robb performed statistical estimates to account for the 5% and 7% of MFP and CFAP payees whose race is unknown, which confirm “that the majority of payments went to white farmers.” Robb Rpt. at 96-97 & n.206 (stating that the most plausible estimate indicates that more than 95% of CFAP

allocation of MFP and CFAP funds was of particular concern to Congress when it was considering minority farmers' urgent need for relief. *Id.* And for good reason. As Dr. Robb explains, "the magnitude of these [recent] programs—more than \$23 billion over two years under the MFP, and nearly \$24 billion under the CFAP—compared to the total amount of minority farmers' direct and guaranteed loan balances—only about \$4 billion"—would make the impact of their uneven distribution especially significant. Robb Rpt. at 97-98. This is especially true since those payments were distributed during a time of increased financial instability caused by a pandemic that Congress found was already having an outsized effect on minority farmers. 167 Cong. Rec. S1264-65.

Third, and as these recent payment programs highlighted, even where minority farmers stand to benefit from USDA assistance, the breakdown in the "relationships between [SDFRs] and" the Department resulting from the Department's history of discrimination may make it "more difficult or impossible" for minority famers "to participate in USDA programs." *Id.* at S1264 (citing statistics showing that the majority of Black farmers surveyed were unaware of recent relief programs, revealing the strained relationship between the agency and those farmers). A GAO report before Congress describes how "historical discrimination has led generations of SDFRs to distrust institutional lenders, making them less likely to apply for credit[]" or participate in other USDA assistance programs. GAO-19-539, at 29. USDA's experience supports this finding. *See* Cobb. Rpt. ¶¶ 55-57. As Mr. Cobb details, in interactions with community groups and potential customers "the agency regularly hears about lack of trust for the agency on the part of minority communities." *Id.* ¶ 56. In USDA's experience, that lack of trust makes minority farmers "more reluctant to engage with USDA and ask for farm loans in the first instance" and "erodes USDA's ability to effectively" advise minority applicants. *Id.* ¶ 57. Dr. Robb's analysis corroborates the agency's observations. She explains that it is frequently observed in the economic studies that "[p]ast personal experience, or expectations derived from the experience of others, can cause wide discouragement among particular groups." Robb Rpt. at 102-07. Data showing

and 98% of MFP payees were non-minority farmers, but that even a more conservative and implausible estimate shows roughly 94% of CFAP and 96% of MFP payees were non-minority farmers).

that minority farmers have lower USDA loan application submission rates and higher withdrawal rates relative to non-minority farmers indicates that minority farmers have “learned [to] distrust” USDA and fall in the category of “discouraged borrowers”—unlikely to seek out USDA assistance, even when they may well qualify for it, based on the expectation that they will be denied. *Id.* This distrust is both an effect of past discrimination and, as the statistics indicate, an additional hurdle to providing targeted relief that moves minority farmers out of the debt cycle. *Infra* Part I.C.

Finally, and most urgently, all of these disparities contribute to a situation where minority farmers are facing much higher rates of default and are disproportionately on the brink of foreclosure relative to non-minority farmers. Statistics before Congress in 2021 put the gravity of the situation in full view: of those with FSA direct loans, 35% of Black farmers and 24% of Hispanic, Asian American, and Indigenous farmers were in default and “could soon lose their farms.” 167 Cong. Rec. S1266; *id.* at S1264 (stating that minority farmers’ loans are “more likely to be in default or in a precarious situation”). Moreover, as Dr. Robb’s analysis shows, the very “minority farmers who would be eligible for debt relief under [§] 1005 have much higher levels of loan delinquency, bankruptcy, and foreclosure than non-minority farmers” with otherwise qualifying loans. Robb Rpt. at 91. Indeed, at the beginning of 2021, *nearly 30% of all minority borrowers*, but only 13.8% of non-minority borrowers, were not current²¹ on their USDA direct loans, *id.* at 92; and more than 10% of minority borrowers, but only 5% of non-minority borrowers, were not current on their USDA guaranteed loans. *Id.* at 93. The statistical disparities reflect the fact that minority farmers are “more vulnerable to adverse conditions, such as natural disasters, poor weather conditions, and economic downturns,” because their “smaller and less profitable” farms leave them with “less wealth and income to draw from[.]” *Id.* at 91. And the statistics reasonably convinced Congress that minority farmers were simply unable to survive the economic crisis precipitated by the pandemic and risked falling victim to “yet another wave of foreclosures and potential land loss[.]” 167 Cong. Rec. S1265-66.

²¹ For purposes of Dr. Robb’s analysis, a borrower may be “not current” on their loan for a variety of reasons, including because the borrower is delinquent or in bankruptcy or foreclosure proceedings, or because the loan is not collectible or is the subject of litigation or a contingent liability. *Id.* at 92.

All of the above provides a strong basis in evidence for Congress to conclude that minority farmers face persistent disadvantages and that such disadvantages are largely attributable to past discrimination by USDA. Dr. Robb's report reinforces that conclusion. She elucidates how "[m]inority farmers may be harmed for decades after a discriminatory act." Robb Rpt. at 3. In fact, the nature of past discrimination and the farming industry make it entirely *expected* that such discrimination would place minority farmers at a disadvantage in the farming industry today. *Id.* at 74. Farming is a capital-intensive business, "requir[ing] significant up-front investment in land, equipment, and supplies," and measuring returns over decades. *Id.* at 86-87. Yet, for decades, minority farmers suffered discrimination at all stages of the loan cycle, which deprived them of the resources necessary to invest in their businesses and build capital—often resulting in foreclosure or the forced sale of land. *Id.* at 82-85. This well-documented pattern, together with other evidence, is consistent with the statistical disparities apparent today. *Id.* at 5, 78, 85; *see also Dean*, 438 F.3d at 456 (noting that statistical evidence was consistent with (1) government's admission to previous discrimination, (2) numerous lawsuits for previous discrimination, and (3) absence of alternative explanation for disparities); *Midwest Fence*, 840 F.3d at 952 (the defendants' disparity studies reveal data that is "consistent with the anecdotal and less formal evidence defendants have offered"). And it is "reasonable to expect," as Congress did, that these discriminatory actions coming from the country's "lender of last resort" would result in just the types of disparities in farm size, revenue, and delinquency rates that exist today. Robb Rpt. at 86, 103.

To be sure, other non-discriminatory factors may contribute to some degree to the disparities between minority and nonminority farmers. However, given that minority farmers generally and often significantly "lag behind their white counterparts" in virtually every relevant metric—including "acreage, market value of production, government payments, net farm income, per-acre market value, and overall wealth"—it is unlikely that these across-the-board disadvantages are explainable primarily by factors untainted by discrimination. Robb Rpt. at 3-4, 74-90. And considering the length and timing of the documented discrimination—occurring "over at least a fifty-year period," and "as late as 2011,"—it should be unsurprising "that minority farmers would continue to suffer the lingering effects of that discrimination only about a decade later." *Id.* at 86-87.

Many courts have also recognized that the effects of “discrimination may linger for many years,” *Stuart v. Roache*, 951 F.2d 446, 452 (1st Cir. 1991), and that remedial action to root out the “vestiges of racial discrimination” may be warranted well beyond the point when “the *practice* of discrimination has halted,” *Rutherford v. City of Cleveland*, 179 F. App’x 366, 377 (6th Cir. 2006) (concluding that statistical disparities showed that the effects of discrimination occurring in the 1970s and 1980s “had not been sufficiently relieved by 1992”); *Paradise*, 480 U.S. at 168-69 (approving a measure designed to remedy “the department’s failure after almost twelve years to eradicate the continuing effects of its own discrimination”) (citation omitted); *Roache*, 951 F.2d at 448, 452-53 (finding a compelling interest in remedying the effects of discrimination occurring ten years prior); *Higgins v. City of Vallejo*, 823 F.2d 351, 358 (9th Cir. 1987) (affirming a city’s 1982 affirmative action hiring program based on evidence of discrimination before 1973); *Fountain v. City of Waycross*, 701 F. Supp. 1570, 1577 (S.D. Ga. 1988) (finding that “a temporal gap of eight years” between evidence of discrimination and a remedial program was “[was] not so great as to neutralize the fact of past discrimination” and a need for a remedy, particularly where minorities remained “statistically underrepresented” in the relevant field); *cf. Grutter*, 539 U.S. at 343 (acknowledging that attaining the compelling interest of student diversity takes time). Indeed, in *Dean*, the Fifth Circuit remanded to the district court to address whether effects of documented discrimination still lingered 20 years later. 438 F.3d at 456-58. Here, Congress found that the effects of past discrimination at USDA have indeed lingered for many years and still place minority farmers at a disadvantage today. That conclusion is strongly supported by the evidence.

3. *The failure of the Government’s past efforts to remedy the lingering effects of discrimination at USDA*

Section 1005 was far from Congress’s first effort to address USDA’s past discrimination and its lingering effects. Those efforts began in the 1980s and included: (1) in 1987, establishing annual target participation rates for minority farmers in direct and guaranteed loan programs; (2) in 1990, creating the “2501 Program” designed to improve outreach and technical assistance to minority farmers; (3) in 1998, suspending statutes of limitations for certain discrimination claims to allow additional farmers to participate in the administrative claims processes being implemented by USDA;

(4) in 2002, changing the structure of USDA’s civil rights complaints processes; (5) in 2008, providing additional funds to administer settlements of *Pigford* cases; (6) in 2014 creating a permanent Office of Tribal Relations under the Secretary of Agriculture; (7) and in 2018, permanently funding the 2501 Program to provide continued outreach to minority farmers. 167 Cong. Rec. S1263-64; *see also* Robb Rpt. at 38-40 (summarizing these efforts). USDA, too, tried many times to target discrimination in its loan programs. As explained below, *infra* Part I.C.2., the agency created special outreach and assistance programs targeted to SDFRs, set target participation rates for SDFRs, and provided incentives to commercial lenders to make farm loans to SDFRs, among other things. Cobb Rpt. ¶¶ 39-51 (detailing the extensive efforts USDA has made to remedy the lingering effects of its past discrimination).

But these efforts, Congress concluded, had “not done enough.” 167 Cong. Rec. S1264. Minority farmers had not escaped the cycle of debt caused by past discrimination that made them “more likely to be in default or in a precarious situation” and inhibited their ability to participate fully in the agricultural economy. *Id.* And Dr. Robb confirms that past efforts “have not fully remedied the problematic effects of decades of USDA discrimination,” as is reflected by minority farmers’ continued disadvantaged position. Robb Rpt. at 40. Congress even found that some of its past efforts—in particular MFP and CFAP—only perpetuated the effects of discrimination and further underscored the necessity of a more targeted, race-conscious remedy.²² *See id.* at 97; *supra* Part I.B. Congress also recognized a breakdown in USDA’s relationship with minority communities as a consequence of discrimination, which further undermined the agency’s efforts to assist them. 167 Cong. Rec. S1264; *see also* Cobb Rpt. ¶¶ 55-57 (discussing the ways in which the lack of trust between

²² Plaintiffs have previously contended that disproportionate funding in programs like MFP and CFAP was not caused by intentional discrimination in administering those particular programs. Pls.’ PI Br. 7, ECF No. 18. The Government does not argue otherwise. But as explained above, and as further detailed by Dr. Robb, minority farmers have largely been left out of these programs because USDA payments tend to favor larger farms; and “the smaller size of minority farms” is itself “likely due in no small part to the historical discrimination in USDA loan programs that ha[s] deprived minority farmers of necessary credit and services.” Robb Rpt. at 89; *see also* Cobb Rpt. ¶ 53 (noting that minority farmers “have not had the same access to credit to increase the size of their operations” and have “less generational wealth”). Thus, Congress had a strong basis for concluding that the general failure of government payment programs to reach minority farmers is a consequence of USDA’s *past* intentional discrimination causing a diminution in minority farms. Robb Rpt. at 88-89, 95-99; *supra* Part I.B.2.

USDA and the minority communities, a product of past discrimination, affects USDA's work).

Thus, the mere existence of past efforts does not prove their success. On the contrary, the evidence establishes that the past efforts have failed to remedy the specific effects of previous discrimination. *See* Cobb Rpt. ¶ 52 (noting that “[d]espite USDA’s various efforts to remedy the lingering effects of historical discrimination through various race-neutral initiatives, minority communities continue to be under-represented in certain USDA programs”).

For instance, USDA has made payments to minority farmers under the administrative claims processes established through *Pigford* and related lawsuits, but as Congress heard in testimony and as the data unambiguously shows, many such payments did not reach victims of discrimination or eliminate the lingering effects of discrimination on those farmers who did receive them. *See* 2002 Hr’g at 16 (decrying the ineffectiveness of the *Pigford* settlements to “set[] things right for black farmers and their families”); *id.* at 73-115 (testimony from minority farmers about the failure of *Pigford* claims processes to affect change); Robb Rpt. at 38-40 (discussing the relatively small number of claimants who received debt relief and citing reports of heavy tax burdens resulting from some relief awarded); Cobb Rpt. ¶ 38 (“[T]he total debt relief provided in these processes was generally concentrated in a very small portion of the classes,” and even fewer of them “received complete debt forgiveness”). Thus, “while the claims processes provided valuable relief to many claimants, those claimants who had outstanding debts generally still had debts with USDA after the claims programs concluded,” and many SDFRs “were still not in a position to pay their debts[.]” *Id.*

As the *Wynn* court acknowledged at the preliminary injunction stage of that case, “[o]n a more fully developed record, the Government may be able to establish that despite past remedial efforts the harm caused by the disgraceful history of discrimination by the USDA in farm loans and programs is ongoing or that the Government is in some way a participant in perpetuating that discrimination such that further narrowly tailored affirmative relief is warranted.” 545 F. Supp. 3d at 1281 n.9. The Government has established just that: it has first engaged in efforts to remedy discrimination through more modest or race-neutral means; and only after those efforts failed did Congress adopt the debt-relief remedy authorized by § 1005. *Cf. Loc. 28 of Sheet Metal Workers Int’l Ass’n v. EEOC*, 478 U.S. 421,

481 (1986) (affirming district court's conclusion that, despite defendants' attempts at alternative remedies in the past, "stronger measures were necessary" to address the effects of long-standing discrimination in the organization).

4. *Plaintiffs cannot rebut that Congress had a strong basis in evidence*

Plaintiffs cannot rebut the substantial evidence supporting Congress's compelling interest. *See Dean*, 438 F.3d at 456 (finding evidence sufficient when, among other things, the plaintiffs "failed to offer any alternative explanation" for statistical disparities). To rebut the Government's evidence, Plaintiffs must present "credible, particularized evidence," such as contrasting statistical data, testimony or documentation of neutral justifications for the statistical results, or proof that the disparity study results are flawed or insignificant." *Kossman Contracting, Co. v. City of Houston*, No. CV H-14-1203, 2016 WL 11473826, at *17 (S.D. Tex. Feb. 17, 2016) (quoting *H.B. Rowe Co.*, 615 F.3d at 241-42)); *see also Aiken v. City of Memphis*, 37 F.3d 1155, 1163 (6th Cir. 1994) (plaintiffs must offer "evidence to rebut the inference of discrimination that arises from the[] statistics"). Plaintiffs have offered no expert of their own who performed his or her own statistical analyses, and thus fail to meet their burden to rebut the government's evidence.

Dr. Robb accounted for alternative, race-neutral factors that might explain observed disparities and rejected them as the primary drivers of those disparities. *See Robb Rpt.* at 74-90. For example, as Dr. Robb explains, the data shows no significant difference across racial groups between the share of new and beginning farmers, who presumably have less experience, as compared to share of total producer population. *Id.* at 74-75. Nor is there any meaningful difference in the number of days worked off the farm between the various racial groups. *Id.* at 76-77 (noting that non-minorities are actually more likely than most minority groups to spend 200 or more days on non-farm work); *id.* (finding that non-minorities are more likely to engage in farming as a secondary occupation or hobby than almost every minority group). Thus, Dr. Robb found that the disparities "are most likely not being driven by a disproportionately large influx of new and beginning farmers from the minority groups." *Id.* at 75. And yet, as her report elaborates, even assuming that "poorer outcomes for minorities could be explained in part by a comparatively larger share of new and beginning farmers,"

that itself would likely “be an artifact of prior discrimination” delaying minorities’ entry into the farming business and putting them “in a worse position” than they would be in absent discrimination. *Id.* at 74-75. *Cf. Midwest Fence*, 840 F.3d at 952 (“[W]e recognize that a minority-owned firm’s capacity and qualifications may themselves be affected by discrimination.” (quoting *Rotbe*, 545 F.3d at 1045)).

At the preliminary injunction stage, on an incomplete record, this Court concluded that the government had not set out a sufficient basis in evidence to establish a compelling interest. Based on the record now before the Court, however, two things are clear. First, the compelling interest supporting § 1005 is eliminating the lingering effects of well documented and undisputed past discrimination by the Government itself. As the record demonstrates, USDA’s historical administration of its loan programs was infected by intentional discrimination. Countless anecdotes of intentionally discriminatory acts are documented in government reports, such as the 1965 and 1982 USCCR Reports, the CRAT Report, and several GAO Reports; in outside reports, such as the JL Report; in congressional testimony, *see e.g.*, 2002 Hr’g; and in litigation such as the *Pigford* and *Keepseagle* cases. Such evidence, coupled with established and “gross” statistical disparities, more than satisfy the Court’s previously articulated standard that the government show (1) specific episodes of (2) intentional discrimination (3) by the Government, rather than rest on “generalized assertions of past discrimination in an industry.” Order on PI & Class Cert. at 16 (citing *Vitolo v. Guzman*, Nos. 21-5517/5528, 2021 WL 2172181, at *4-5 (6th Cir. 2021)).

Second, Congress had a “strong evidentiary basis” to conclude that existing disparities reflect the lingering effects of that historical discrimination, *Dean*, 438 F.3d at 455, even if there is “no evidence of intentional discrimination by the USDA in at least the past decade.” Order on PI & Class Cert. at 17. It is “well settled” that addressing lingering effects of *past* discrimination is a compelling interest. *Dean*, 438 F.3d at 454 (citing *Paradise*, 480 U.S. at 167). Ample record evidence, confirmed by Dr. Robb’s and Mr. Cobb’s reports, establish that the denial of lending support from the “lender of last resort” would have long-term effects for borrowers and would-be borrowers. *See, e.g.*, Robb Rpt. at 41, 74, 82-87; Cobb Rpt. ¶¶ 52-59.

Thus, the record now before the Court makes clear that Congress’s intention was to remedy

the lingering effects of clearly identified, well-documented, and repeated discriminatory actions by FSA officials in the administration of USDA's loan programs, not discrimination in society more broadly. *Cf. Wygant*, 476 U.S. at 288 (opinion of O'Connor, J.) (explaining that a governmental unit's efforts to remedy "societal discrimination" are those that seek to remedy "discrimination not traceable to its own actions"). As explained, various studies, anecdotes, and other evidence establish a pattern of discrimination occurring at all phases of the loan cycle; and the current statistical disparities reveal that minority farmers continue to suffer the fallout of decades-long government discrimination that deprived them of the same opportunities that non-minority farmers had to develop their farms and build credit. The current statistical disparities are useful for measuring whether and to what extent minority farmers continue to experience the effects of discrimination in USDA loan programs—that is, they provide a helpful "starting point in the process of shaping a remedy[.]" *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 25 (1971). But the remedy Congress ultimately adopted is not designed to close the gaps in all observed disparities; and it bears no resemblance to the long-term diversity programs whose successes are measured in fixed quotas aimed at achieving "racial balance." *Compare* Order on PI & Class Cert. at 18 (doubting constitutionality of "racial balancing" programs). Instead, § 1005 is a one-time remedy to give relief to minority farmers, who are disproportionately in need and yet have largely failed to benefit from past government payments—and at a critical point in time, when the economic crisis caused by the pandemic put them disproportionately at risk of losing their farms. As Congress put it, this debt relief is an important step to prevent "yet another wave of foreclosures and potential land loss," and to "begin to turn the page on th[e] shameful history of discrimination" at USDA. 167 Cong. Rec. 1266.

* * *

In sum, there is a strong basis for Congress's conclusion that *historical* discrimination in USDA's loan and other financial assistance programs left minority farmers in a dire financial situation *today*—necessitating urgent, race-conscious relief in the midst of the economic crisis caused by the pandemic.

C. Section 1005 is narrowly tailored to redress the persistent effects of past discrimination

Targeting debt relief to minority farmers is a narrowly tailored means to further the Government's compelling interest in remedying the lingering effects of historic discrimination in USDA loan programs. A race-conscious remedial "plan is narrowly tailored if, as a practical matter, it discriminates against [excluded groups] as little as possible consistent with effective remediation." *Majeske*, 218 F.3d at 820 (citation omitted). Various factors bear on the analysis, including: "the necessity for the relief and the efficacy of alternative remedies; the flexibility and duration of the relief"; "the impact of the relief on the rights of third parties," *Paradise*, 480 U.S. at 171; *see also Walker*, 169 F.3d at 982 (identifying same factors). These factors collectively show that USDA's provision of debt relief to minority farmers is narrowly tailored.

1. Debt relief is necessary to remedy the evident lingering effects of discrimination against minority farmers

The need for a particular remedy overlaps with the compelling interest inquiry. *See Dean*, 438 F.3d at 458 (noting relationship between this factor and the compelling interest inquiry); *Midwest Fence*, 840 F.3d at 954 ("The necessity of relief overlaps our analysis of [the government's] strong basis in evidence for believing [its] programs were needed to remedy lingering effects of discrimination.").

Here, the extensive evidence of the economic damage that USDA's long history of discrimination wrought on minority farmers firmly establishes the need for § 1005's financial remedy. As detailed above, minority farmers continue to suffer the economic aftershocks of the long history of USDA denying them equal access to financing and other support programs. *See Cobb Rpt.* ¶¶ 52-59. Without the assistance available to other communities, minority farmers have failed to accrue capital at the same rates as their non-minority counterparts. *See id.* ¶ 53. They have been left operating smaller and less profitable farms, experiencing disproportionate rates of default and foreclosure, and have had less access to commercial credit. *Id.*; *see also Robb Rpt.* at 55-73, 80-83, 91-101. In other words, because of the lack of historical access to USDA programs, minority farmers have been less able to expand their operations, pay their debts, and accumulate wealth. *Cobb Rpt.* ¶ 53. And these disadvantages are self-reinforcing: because they had been excluded from programs that would assist them in growing their operations, minority farmers have been less likely to benefit from the recent

large agricultural subsidies, which overwhelmingly benefitted farmers with greater capital. *Id.* ¶ 59; *see also* Robb Rpt. at 95-99. As Mr. Cobb explains, a directed infusion of capital to minority farmers is both necessary and the most effective way to help them escape the cyclical effects of discrimination, which are likely to continue unabated absent intervention. Cobb Rpt. ¶¶ 82-83, 85 (noting that “[d]irect financial assistance through debt payment frees up funds for expansion of operations that many socially disadvantaged farmers could not achieve in prior years” despite other USDA efforts).

Additionally, § 1005’s directed infusion of capital to minority farmers is necessary to address minority racial groups’ lack of trust in USDA—a distinct lingering effect that also interferes with USDA’s efforts to remedy the economic damage wrought by its past discrimination. *Id.* ¶ 86, 89. As Mr. Cobb details in his expert report, the long history of discrimination by USDA is well known within minority communities, and has a significant impact on how those communities perceive current USDA programs and efforts to assist them. *Id.* ¶¶ 55, 57. In meetings with individual farmers, community groups, and non-profits, USDA has consistently heard about minority farmers’ lack of trust about USDA’s intentions. *Id.* ¶ 56. This lack of trust is not only damaging to USDA’s reputation, but it also tends to compound the damage from USDA’s prior discriminatory treatment by making minority farmers as a group less likely to engage with USDA, to learn about programs that could benefit them, and to take advantage of those programs. *See id.* ¶¶ 57, 58; *see also* Robb Rpt. at 102-07. Because those programs are specifically designed to assist farmers who are ineligible for or may have a hard time obtaining commercial credit, USDA’s inability to overcome the justified distrust by minority communities means that even farmers who have never personally experienced discrimination may nonetheless experience economic injury attributable to past discrimination by USDA. *See* Cobb. Rpt. ¶¶ 11-12 (discussing general purpose of FSA loans); *see also* 167 Cong. Rec. at S1264 (noting that the “diminished relationships between [SDFRs] and USDA as a result of both latent barriers and historic discrimination” is reflected in surveys indicating that “73 percent of Black farmers” were not aware of the agency’s recent aid programs). Section 1005 remedies this injury also, by signaling to minority communities that USDA is committed to repairing the damage of the past and assisting them financially today. Cobb Rpt. ¶¶ 86-87.

USDA’s experience following the enactment of § 1005 confirms that the legislation is particularly well suited to this remedial purpose. Following the passage of the legislation, community organizations that work with minority farmers and partner with USDA reported that their members viewed the provision as signaling a new era for the agency and were more interested in forging a new working relationship. *See id.* ¶ 89. And “more minority farmers came forward to update their data with FSA,” which they had not done following the enactment of other subsidy programs out of reported “concern that they would not be treated fairly by FSA.” *Id.* ¶ 88. Based on his “extensive experience with farm loan programs,” Mr. Cobb anticipates that implementation of § 1005 “would give individuals a sense that FSA is acknowledging past issues and [would] demonstrate that FSA is committed to working with minority communities,” thus making those communities more likely to engage with FSA. *Id.* ¶ 90. And such engagement would, in turn, enable “USDA to extend the reach of its other financial programs,” making those programs more effective at serving minority communities in the future. *Id.*; *cf. Petit*, 352 F.3d at 1115 (recognizing that earning the “trust of the community” can be an important component of a remedial program because trust helps a government entity perform its mission more “effective[ly]”).

The discrimination faced by minority farmers has been documented in various reports, lawsuits, and congressional hearings over decades. *See, e.g.*, CRAT Rpt. (reporting anecdotes and other evidence of discrimination by FSA against Black, Hispanic, Native American, and Asian farmers); JL Rpt. at 81-86 (same); Robb Rpt. at 16-38 (discussing the reports); Cobb Rpt. at ¶¶ 25-38 (same); *supra* Part I.B.1. Data analyzed by Dr. Robb further shows how, currently, Black, Hispanic, Native American, Asian, and Native Hawaiian/Pacific Islander farmers all generally have smaller farms, bring in less revenue, have less capital, receive fewer government payments, and face higher rates of foreclosure. Robb Rpt. at 41-91, 91-107. Because § 1005 is available to these specific groups, who are “actually disadvantaged” by past USDA discrimination, *Midwest Fence*, 840 F.3d at 946, it is narrowly tailored to remedying the lingering effects of that discrimination.

2. *Record evidence shows that other alternatives considered and implemented by USDA have been inadequate*

Crucially, the evidence available to Congress and USDA shows that § 1005 is uniquely able to

remedy the lingering effects of prior discrimination, including by injecting needed capital into struggling minority farms and rebuilding trust between USDA and these communities. Indeed, USDA's experience demonstrates that § 1005 is necessary precisely *because* the other alternatives that USDA has attempted over the years have come up short.

To start, the evidence in this case unambiguously demonstrates that the most direct efforts to compensate victims of discriminatory practices—the *Pigford* and *Keepseagle* settlements and related claims processes—did not reach all victims and did not eliminate the broader lingering effects of the agency's practices. *Supra* Part I.B.3; Cobb Rpt. ¶ 38. The available statistical and anecdotal evidence also firmly establishes that minority farmers as a group continue to suffer from having had inadequate access to and support from the Department's programs. *See, e.g.*, Robb Rpt. at 91-108; Cobb Rpt. ¶¶ 53-57; 167 Cong. Rec. at S1264 (noting that settlements “have not provided the relief necessary for [] farmers of color to participate fully in the American agricultural economy”).

Since the implementation of these settlements, USDA has undertaken many measures to remedy those lingering economic effects and rebuild trust with minority communities. Cobb Rpt. ¶¶ 39-51 (detailing USDA's extensive efforts to remedy lingering effects of past discrimination). Among other things, USDA has streamlined its regulations and taken steps to standardize loan servicing to ensure equal treatment of all applicants by removing county committees from the loan-making decision process. *See id.* ¶¶ 40, 41, 44. Further, FSA has created numerous specialized programs to expand access to credit. These include the microloan program, which is “designed to meet the needs of small and beginning farmers, or for non-traditional and specialty operations by easing some of the requirements and requiring less paperwork,” *id.* ¶ 46, and “the down payment program[,] [which] assists socially disadvantaged and beginning farmers in purchasing a farm” by, among other things, providing guarantees to commercial lenders, *id.* ¶ 49; *see also id.* ¶¶ 50-51 (discussing other programs such as the “Land Contract Guarantee Program [] designed to assist beginning or socially disadvantaged farmers and ranchers to obtain farmland”). For loans to socially disadvantaged farmers and ranchers, FSA also guarantees up to 95% of a commercial lender's losses in the event of default to encourage lenders to provide loans to those borrowers. *Id.* ¶ 48.

To expand the reach of these and other programs, FSA has created a specialized outreach office whose mission is “to address systemic deficiencies in the delivery of USDA programs and services to minority and socially disadvantaged farmers and ranchers,” and has established outreach coordinators in every state and each of FSA’s 2,124 county offices nationwide.²³ *Id.* ¶¶ 42, 45. FSA has further sought to connect with historically underserved groups through the 2501 Program, established by Congress in 1990 and permanently funded in 2018, which provides grants for “higher education institutions and nonprofit and community-based organization to extend USDA’s engagement efforts” to socially-disadvantaged communities. *Id.* ¶ 43. These grants fund “projects that include conferences, workshops, and demonstrations on various farming techniques, farm financial planning,” and “connect[s] underserved farmers and ranchers to USDA local officials to increase awareness of USDA’s programs and services.” *Id.* Just last year, USDA invested \$4.7 million to establish partnerships with organizations to assist with outreach and education about FSA programs.²⁴

These efforts have achieved some, but only limited, success. For example, after its initial implementation of CFAP, USDA learned that only approximately one percent of applicants were minority farmers, despite those farmers’ great need for pandemic assistance. *See* Cobb Rpt. ¶ 59. In response, USDA reopened CFAP in March of 2021 to reach a greater share of farming operations and used existing cooperative agreements to advertise the program and provide technical assistance. *Id.* ¶ 60 (noting that the agency committed more than \$2 million to those partnerships). In the second round of the program, minority farmers constituted 16% of applicants, demonstrating that they were both eligible for and capable of participating given the appropriate opportunity. *Id.*

But CFAP was a unique program, and “it is not possible to similarly address past inequities in Farm Loan Programs that have had longstanding lingering effects through incentive programs and increased outreach alone.” *Id.* As both Dr. Robb and Mr. Cobb detail in their reports, the damaging residual effects of the Department’s discrimination persist. Despite the direct loans and financial guarantees and incentives that USDA provides to commercial lenders, minority farmers continue to

²³ *See* <https://perma.cc/788X-THEK>.

²⁴ *See* <https://perma.cc/Q5WK-WNW4>.

be demonstrably less likely to benefit from commercial credit or from USDA programs—and are more likely to default on loans and face foreclosure when they do. *See* Robb Rpt. 91-95, 99-101; Cobb. Rpt. ¶ 53. And, as Congress found and as Mr. Cobb details, community organizations continue to report that minority farmers lack trust in USDA. Cobb. Rpt. ¶¶ 55-58.

The long history of only partially successful efforts on the part of USDA thus confirms that the relief provided by § 1005 was necessary. The government need not demonstrate that it exhausted “every conceivable race-neutral alternative” before implementing race-conscious measures. *Grutter*, 539 U.S. at 339. Where, as here, a “serious, good faith consideration of workable race-neutral alternatives” reveals that those “available, workable race-neutral alternatives do not suffice,” resort to a race-based classification is appropriate. *Fisher*, 570 U.S. at 312-13 (internal quotes and citations omitted). Strict scrutiny does not restrict the Government to ineffectual measures. *Fisher II*, 136 S. Ct. at 2214 (rejecting the plaintiff’s proposed alternatives as not “available” or “workable” means of achieving university’s compelling interest). Unlike past measures, § 1005 swiftly and efficiently provides the financial assistance necessary for minority farmers to remain current with their loans, avoid foreclosure, and build the capital required to remain in the business of farming, while also improving the efficacy and reach of USDA’s other programs by increasing trust between the agency and the minority communities—all of which is necessary to address the acute needs of minority farmers whose finances have been roiled by a once-in-a-lifetime pandemic. Under these unique circumstances, the need for targeted debt-relief offered by § 1005 is firmly rooted in the record before Congress, and the most effective way of achieving Congress’s compelling interest of remedying the lingering—yet still very present—effects of USDA’s past discrimination.

3. *Debt relief satisfies the remaining narrow tailoring criteria*

The remaining factors courts typically consider in the narrow tailoring analysis underscore § 1005’s close match to the lingering effects of discrimination that it is designed to remedy.

To start, the debt relief is temporary. It authorizes debt relief as “a one-time occurrence,” *Paradise*, 480 U.S. at 178, extended only to SDFRs with qualifying loans as of January 1, 2021. And that relief “evaporate[s] . . . upon implementation,” *id.*, meaning that all regular repayment obligations

continue to apply to all loans administered after that date. The brief existence of § 1005 debt relief ensures that it endures no longer than necessary to serve its purposes and “is not a disguised means to achieve racial balance.” *Id.* Additionally, § 1005 is not under- or over-inclusive. As discussed above, it is targeted specifically to the racial and ethnic groups that were victims of discrimination by USDA and that continue to suffer the lingering effects of such discrimination both on an individual and on a community level. *Supra* Part I.B.1. A narrower provision of relief would not achieve those interests.

Nor does § 1005 burden non-minority farmers. *Paradise*, 480 U.S. at 182 (“[T]he temporary and extremely limited nature of the requirement substantially limits any potential burden on white applicants for promotion.”). Concern about burden is triggered when favoring one group will exclude another from opportunities it would otherwise have. Thus, in the case of an affirmative action program where there are a limited number of contracts or promotions, the opportunity given to one person may prevent another from competing for it. *See id.* Here, administering debt relief to minority farmers does not burden non-minority farmers “directly, if at all,” *Sheet Metal Workers*, 478 U.S. at 488 (Powell, J., concurring), because it does not affect non-minority farmers’ ability to continue participating in USDA loan and other assistance programs in any way. Non-minority farmers, including the class members, will remain in the same position before and after the administration of debt relief to others. Indeed, the named Plaintiffs have received a variety of farm program subsidies from USDA, including MFP and CFAP payments, totaling thousands of dollars since 2010.²⁵ Section 1005 does not affect any other subsidy programs or remove a pre-existing benefit from class members for which they are otherwise eligible. It simply extends relief to minority farmers who have long been denied the same government-conferred benefits that non-minority farmers have enjoyed in the past. *Supra* Part I.B.2; *see* Robb Rpt. at 95-99. Section 1005 thus imposes no burden on non-minority farmers, much less an impermissible one. *Cf. Sheet Metal Workers*, 478 U.S. at 481 (finding 29.3% nonwhite union

²⁵ Since 2010, Plaintiff Sid Miller has received at least \$192,290 in farm programs subsidies; Plaintiff Greg Macha has received at least \$2,364; Plaintiff James Meek has received at least \$32,404. Plaintiff Jeff Peters has received at least \$138,063; Plaintiff Lorinda O’Shaughnessy has received at least \$1,447. *See* Cobb Decl. ¶ 59 n.7.

membership goal permissible because it had “only a marginal impact on the interests of white workers” where whites were “denied certain benefits available to their nonwhite counterparts” but still constituted “a majority of those entering the union”). Plaintiffs have not argued otherwise.

4. *Section 1005 is neither over- nor under-inclusive*

Neither is § 1005 over-inclusive or under-inclusive. Remedial programs such as § 1005 may constitutionally reach those not themselves victims of individualized discrimination. Precedent is clear on that point: a race-conscious remedy may provide benefits on a group-wide basis, regardless of whether each individual member of the group has suffered discrimination. *See, e.g., Sheet Metal Workers*, 478 U.S. at 482 (upholding order “benefitting individuals who are not the actual victims of discrimination”); *Wygant*, 476 U.S. at 287 (opinion of O’Connor, J.) (“[I]t is agreed [by the full Court] that a plan need not be limited to the remedying of *specific instances* of identified discrimination for it to be deemed sufficiently ‘narrowly tailored[]’ . . . to the correction of prior discrimination by the state actor.” (citation omitted) (emphasis added)); *Croson*, 488 U.S. at 509 (noting that, in some cases, “some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion”); *see also Black Fire Fighters Ass’n of Dallas v. City of Dallas*, 19 F.3d 992, 996 (5th Cir. 1994) (similar). The prospect that relief might extend beyond those who personally suffered discrimination is inherent in the concept of strict scrutiny analysis, which is triggered by the use of race-based measures that, by their very nature, apply on a group-wide basis. *See Croson*, 488 U.S. at 493-94. And that is especially true where the record establishes that provision of benefits to a previously disadvantaged group is necessary to rebuild trust with that group as a whole.

Relatedly, Congress had a strong evidentiary basis for including each of the racial groups within the definition of SDFR for purposes of § 1005. *See generally* Robb Rpt. (examining evidence related to each group). The debt relief program is not over-inclusive because it extends to racial groups that may have experienced less discrimination or that might be less disadvantaged than other groups.

Nor is § 1005 under-inclusive merely because it provides no relief for minority farmers who were unable to obtain a farm loan or who no longer have a farm loan because of discrimination at USDA. A given remedial action need not address every conceivable instance or effect of race

discrimination to be narrowly tailored. Congress had before it evidence that the relief provided by the *Pigford* and similar claims processes targeted those denied loans, while largely leaving out those who received loans. *See, e.g.*, 2002 Hr’g at 7, 73-115; Robb Rpt. at 38-40; Cobb Rpt. ¶ 38; 167 Cong. Rec. at S1264. And § 1006 of ARPA (which is not a subject of this lawsuit) authorizes USDA to “provide financial assistance to socially disadvantaged farmers, ranchers, or forest landowners that are *former* farm loan borrowers that suffered related adverse actions or past discrimination or bias in [USDA] programs, as determined by the Secretary.” ARPA § 1006 (emphasis added). Thus, former borrowers who no longer have loans because of discrimination may receive assistance through this alternative avenue.

The debt relief authorized by § 1005 is designed to reverse the lingering effects of discrimination experienced by minority farmers currently engaged in the business of farming. Those farmers, the evidence shows, generally operate smaller and less profitable farms, face disproportionately higher risks of default and foreclosure, are routinely excluded from USDA financial benefits programs, and face disproportionate hurdles to graduating from USDA programs to other forms of commercial credit. *Supra* Part I.B.2.; *see also* Robb Rpt. at 99-101; Cobb Rpt. ¶ 53. On top of these disadvantages, minority farmers’ distrust of USDA because of past discrimination creates another barrier that keeps both current and prospective minority farmers from participating in USDA programs even when they qualify. Section 1005 is narrowly tailored to remedying all of these lingering effects. It provides the funds necessary for minority farmers to pay off their debts and not only to keep their farms but also to grow and develop them in ways that past discrimination has prevented. And it sends a strong signal to all current and prospective minority farmers that USDA is committed to supporting minority farmers despite its historical discriminatory actions.

II. If the Court finds Section 1005 unconstitutional, the proper remedy is to extend its benefits, not to nullify the statute

For the reasons given above, the Court should reject Plaintiffs’ claims and enter judgment for Defendant. However, should the Court conclude that § 1005 violates the class members’ equal protection rights, the Court will face a question of remedy. There are two options available to redress

a plaintiff's claim that a benefits program denies the plaintiff equal protection under the laws. A court can order either that the benefits must be extended to the excluded plaintiffs or that the benefits must be denied to all. Here, if the Court concludes that § 1005 is unconstitutional, the Court should enter the same relief that courts ordinarily enter to remedy an equal protection violation: extension of the benefits to those excluded under the challenged provision. Such a remedy better comports with Congress's evident intent and awards the class members in this action a material benefit without depriving nonparties of the benefits Congress intended for them.

In cases “involving equal protection challenges to underinclusive federal benefits statutes,” the Supreme Court has explained, the “proper course” is ordinarily to extend benefits to the excluded claimant. *Califano v. Westcott*, 443 U.S. 76, 89 (1979); *see also Califano v. Goldfarb*, 430 U.S. 199 (1977) (extending survivors' benefits); *Jimenez v. Weinberger*, 417 U.S. 628 (1974) (extending disability benefits); *Dep't of Agric. v. Moreno*, 413 U.S. 528 (1973) (extending food stamps); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (extending military spousal benefits). Such remedies do not “rewrite” or “construe” the statute; instead, they are an exercise of the judiciary's power to redress constitutional wrongs. Whether to extend the benefits or nullify the statute requires a judgment about which remedy “Congress likely would have chosen ‘had it been apprised of the constitutional infirmity.’” *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017) (quoting *Levin v. Com. Energy Inc.*, 560 U.S. 413, 427 (2010)). This is necessarily a speculative inquiry, although the answer will draw on Congress's intent in passing the statute that is challenged. *See id.* at 1699 (“The choice between these outcomes is governed by the legislature's intent, as revealed by the statute at hand.”).

Here, extending the benefits to the class members—who are non-minority farmers—is the proper course. To do otherwise “would impose hardship on beneficiaries whom Congress plainly meant to protect.” *Westcott*, 443 U.S. at 90. Congress enacted § 1005 as part of a broad economic stimulus package. It did so against a backdrop of threatened foreclosures and farm failures for many minority farmers, and it made an unlimited appropriation to provide those farmers with needed relief. *See, e.g.*, H.R. Rep. No. 117-7, at 2 (2021) (focusing on the “most vulnerable communities . . . forced to bear the brunt of” the pandemic and resultant economic crisis “as underlying health and economic

inequities gr[e]w worse”); *id.* at 12 (observing that minority farmers “received a disproportionately small share of the farm loans and payments administered by USDA as a result of . . . longstanding and widespread discrimination”). Congress observed that decades of discrimination had deprived many minority farmers of the capital necessary to survive and to thrive in the farming sector, and that as a result minority farms were failing at high rates. 167 Cong. Rec. S1264-66 (stating that SDFRs have “proportionately less agricultural credit than” non-SDFRs and were more likely to be in default and facing foreclosure). A court order that eliminated benefits for all farmers would deny relief to those that Congress determined urgently needed it.

Four aspects of the statutory scheme further indicate that Congress would have preferred to extend benefits to non-minority farmers rather than to deny them to everyone. First, Congress made an unlimited appropriation for the § 1005 program, *see* § 1005(a)(1), indicating that it intended to pursue the program without regard to final cost. To be sure, Congress anticipated the program would cost a certain amount, but it nonetheless enacted an unlimited appropriation to ensure that minority farmers would obtain relief even if the cost exceeded Congress’s estimate.

Second, an overarching purpose of ARPA as a whole was to provide economic support across the U.S. economy and to stimulate economic growth. H.R. Rep. 117-7, at 2 (“Our nation is struggling to endure the unrelenting devastation spawned by the pandemic and corresponding economic fallout.”); *id.* at 3 (“This ambitious \$1.9 trillion plan provides the resources needed to change the direction of the pandemic and spur an inclusive and strong economic recovery.”). Nullifying § 1005 would be inconsistent with that purpose, denying economic support that Congress thought important to its overall scheme. Expanding the program to include the class members, by contrast, would be wholly consistent with that broader purpose by providing additional economic support to an important sector of the economy.

Third, and relatedly, the vast majority of loans covered by § 1005 are only available to individuals who are unable to obtain a loan without an FSA guarantee on reasonable terms in the

private market.²⁶ Thus, USDA has already determined that almost all borrowers who would benefit from the extension of the program face some difficulty in accessing capital. This provides at least some basis to think that holders of these loans generally are more at risk of foreclosure or failure than are farmers without such loans, and that Congress therefore would have wanted to provide relief to additional individuals who hold these kinds of loans rather than to none.

Fourth, the cost of extending the program to include all non-Hispanic white farmers is quite small in comparison to the overall cost of the bill that includes it. Expanding the program is estimated to cost approximately \$36 billion,²⁷ but the overall cost of ARPA exceeds \$1.9 trillion. Moreover, such costs are on the same order of magnitude as costs of remedies that the Supreme Court has previously endorsed. In *Mathews v. Goldfarb*, for example, the Solicitor General estimated that expanding the program would cost \$447 million, just for the first year. *See* Brief for Appellant, *Goldfarb*, No. 75-699 (U.S.), 1976 WL 181385, at *39. Adjusted for inflation, that remedy—which the Supreme Court endorsed 40 years ago—would cost over \$2 billion *per year*. Because the § 1005 program is limited to loans held as of a specified date, it will be a one-time cost, not a recurring one.

Nor would expanding § 1005 make the exception the rule. Section 1005 is a one-time program that is tied to loans held as of a certain date. The ordinary rule—repayment of loans subject to the robust statutory and regulatory scheme—will continue in force for all new loans and for all loans outside the scope of § 1005. Nor would such relief raise issues of sovereign immunity; courts have entered such relief for decades, including, and especially, in “cases involving federal financial assistance benefits.” *Morales-Santana*, 137 S. Ct. at 1699. The relief ordered in such cases is not to pay money damages, but to evaluate eligibility for government benefits without regard to the suspect classification. Such relief does not implicate the general limits on awarding money damages against the government. *Cf. Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988) (explaining that suit seeking payment under a statutory scheme is not a suit seeking money damages).

²⁶ Farm Storage Facility Loans are generally available to any farmer, but account for less than 1% of the total value of loans potentially covered by § 1005. Cobb Rpt. ¶ 64.

²⁷ The estimate offered by the district court in *Faust* is inaccurate. *See* Cobb Rpt. ¶ 93.

Such remedies also do not implicate the Appropriations Clause, just as the remedies endorsed by the Supreme Court in the *Wescott* line of cases did not. As this Court previously recognized, courts are powerless to expand congressional appropriations. Order on PI & Class Cert. at 20. An order prohibiting USDA from considering race or ethnicity in awarding relief under § 1005 would not enlarge the amount appropriated for § 1005, but would simply require USDA to administer the appropriated funds without regard to the borrowers race or ethnicity. And although Congress remains free to limit the appropriated amount in future legislation, for the time being Congress has appropriated an unlimited amount of funds.²⁸

Ultimately, the question which relief is appropriate turns on which remedy “Congress likely would have chosen ‘had it been apprised of the constitutional infirmity.’” *Morales-Santana*, 137 S. Ct. at 1701. Here, all the available evidence indicates that Congress would rather have expanded the program to provide relief to additional farmers than have abandoned the program entirely and denied relief to those it determined to be urgently in need of it. Should the Court conclude that § 1005 violates the class members’ equal protection rights, it should redress that wrong by extending the program’s benefits to those class members without regard to race or ethnicity.

CONCLUSION

For the reasons given above, the Court should enter judgment for Defendant or, if the Court concludes § 1005 is unconstitutional, order that § 1005’s benefits be extended to the class members without regard to race or ethnicity.

²⁸ See U.S. Government Accountability Office, Office of the General Counsel, *Principles of Federal Appropriations Law* 2-10 (identifying “such sums as may be necessary” as creating an “indefinite appropriation”) (“GAO Redbook”), <https://perma.cc/7KFP-L64Q>.

Dated: March 11, 2022

Respectfully submitted,

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/s/ Kyla M. Snow

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Certificate of Service

On March 11, 2022, I electronically submitted the foregoing document using the emergency filing procedures for the U.S. District Court, Northern District of Texas. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kyla M. Snow
KYLA M. SNOW
United States Department of Justice

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

SID MILLER, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

TOM VILSACK, in his official capacity as SECRETARY OF AGRICULTURE,

Defendant.

Civil Action No. 4:21-cv-595-O

DECLARATION OF WILLIAM D. COBB

1. My name is William D. Cobb. I am over 21 years of age and fully competent and duly authorized to make this declaration. The facts and opinions in this declaration are based on my personal knowledge and information I have gathered for the purposes of producing this report.

Qualifications

2. I have been employed by the United States Department of Agriculture (“USDA”) Farm Service Agency (“FSA”), or its predecessor agency, for over 37 years and am stationed in Washington, District of Columbia.

3. I am presently Deputy Administrator for Farm Loan Programs (“FLP”) in charge of the Farm Loan Programs policies and activities within FSA, a position I have held since April 2019. As Deputy Administrator for FLP, I oversee a \$32 billion loan portfolio and provide leadership, management, and direction to FSA’s direct and guaranteed lending programs, including annual appropriations in excess of \$9.85 billion for new loans and guarantees. I also provide technical assistance to Congress on development of legislative initiatives and establish systems to monitor

compliance with Equal Opportunity laws and statutes authorizing program delivery. In addition, I lead analysis to identify regional or national loan making and servicing problems, and develop corrective actions to mitigate deficiencies.

4. As part of my responsibilities as Deputy Administrator for FLP, I provided data to Congressional Budget Office and Congressional Research Service for their assessment of the impact of the initiative that ultimately became Section 1005 of the American Rescue Plan Act of 2021 and have led USDA's the implementation of that provision.

5. I started my federal government career 37 years ago as a loan officer in Delaware and have since held various positions in FLP at the FSA National Office in Washington, D.C. for the past 30 years. Prior to serving as the Deputy Administrator for FLP, over the last ten years, I have served as the Acting Deputy Administrator of FLP, the Assistant Deputy Administrator for FLP, and the Deputy Director of the Program Development and Economic Enhancement Division. I also have served as an Agricultural Economist, advising on regulatory policy and activity, ensuring compliance with regulatory requirements, and overseeing development of regulations to meet both statutory intent and public needs.

6. Throughout my career I have attended training courses on a range of topics, including regulatory drafting and process, credit and financial analysis, and informational rule making. I have also received honors recognizing my work in Farm Loan Programs, including the Secretary of Agriculture's Honor Award for my work with the FLP Streamlining Task Force and the FSA Administrator's Award for the development of a guide to FSA Farm Loans.

7. I am a graduate of the Federal Executive Institute and I hold a Bachelor of Science in Agricultural Business Management from the University of Delaware.

8. Through the course of my professional duties, I am familiar with the statutory authorities, regulations, policies, and procedures that govern FLP¹ operations and loans as well as

¹ Farm Loan Programs are administered primarily under the Consolidated Farm and Rural Development Act of 1961 ("CONACT"), as amended (7 U.S.C. § 1922, et seq.). A potential borrower must show inability to obtain sufficient credit elsewhere to qualify for a majority of these types of loans.

Farm Storage Facility Loans.² Over the course of my career, I have led initiatives to streamline the Federal regulations for FLP, have provided technical assistance to Congress on the development of legislation impacting FLP, developed training programs on loan making and loan servicing for farm loan officers, and developed and implemented programs, policies, and procedures used to process tens of thousands of direct and guaranteed loan and servicing applications per year that service more than 120,000 borrowers.

Summary of Conclusions

9. I have been asked to provide a report addressing: (1) the general scope of USDA Farm Loan Programs, the Farm Storage Facility Loan Program, and certain other forms of recent loan and financial assistance programs; (2) USDA's history of discrimination against minority farmers and ranchers in Farm Loan Programs; (3) relevant agency efforts to remedy effects of historical discrimination and to increase minority participation in USDA Farm Loan Programs; (4) the lingering effects of USDA's historical discrimination against minority farmers and ranchers notwithstanding USDA's remedial efforts; and (5) why USDA's implementation of § 1005 of the American Rescue Plan Act is necessary to remedy the lingering effects of USDA's past discrimination.

10. A summary of my conclusions and opinions is as follows:

a. The USDA has a well-documented history of discrimination against minority farmers and ranchers in the administration of its various Farm Loan Programs. This historical discrimination continues to have observable effects on minority communities.

b. USDA has attempted to address or remedy these lingering effects of historical discrimination in a variety of ways, including by creating special outreach programs, entering into cooperative agreements with local organizations, establishing administrative processes for discrimination claimants, and otherwise adjusting the implementation of its programs.

² Farm Storage Facility Loans are administered under the Commodity Credit Corporation ("CCC") Charter Act (15 U.S.C. § 714, et seq.) and the Food and Conservation, and Energy Act of 2008 (7 U.S.C. § 7971 and 8789). A potential borrower need not show inability to obtain credit elsewhere to qualify for these types of loans.

c. Despite USDA's various efforts to remedy the lingering effects of historical discrimination, minority communities continue to be underrepresented in USDA programs. Minority farmers and ranchers are disproportionately less likely to participate in or benefit from certain types of financial or loan assistance that USDA offers.

d. USDA's experience has demonstrated that direct financial assistance to socially disadvantaged farmers and ranchers, of the kind authorized under § 1005, is necessary to assist in remedying some of the persistent effects of past USDA discrimination which cannot be remedied by race-neutral programs alone. Among other things, such direct financial assistance is necessary to address the lack of generational wealth that are observable in higher rates of delinquency, loan denial, application withdrawal, and foreclosure for minority communities. Further, direct financial assistance is integral in rebuilding trust between USDA and minority communities in a way that will make other USDA and FSA programs more effective overall.

e. USDA's implementation of § 1005 is specifically designed to achieve the goal of remedying the lingering effects of past discrimination in USDA programs while rebuilding trust between USDA and minority communities. An inability to successfully implement the program will adversely affect minority communities and their engagement with USDA.

Background on FSA Programs

11. FSA provides programs and services that support the economic stability of farmers and ranchers. The Agency works closely with other USDA agencies to accomplish USDA's strategic goal of assisting rural communities. FSA's farm loan programs provide access to credit for farmers and ranchers who are temporarily unable to obtain financing from a commercial source at reasonable rates and terms. Price weaknesses in the livestock sector, adverse weather conditions, and heightened risk sensitivity in the commercial lending sector, generally result in greatly increased demand for FSA loans.

12. Through direct and guaranteed farm ownership, operating, emergency and other loans, FSA assists tens of thousands of family farmers each year in starting and maintaining profitable farm businesses. FSA's loan programs are also an integral part of USDA's economic safety net. As a part

of this safety net, FSA participates with borrowers in a number of routine servicing activities to ensure a farm's success. These activities include routine chattel inspections, farm visits, and analysis of financial documents. Delinquent loan servicing, including account restructuring options, is also essential to assist borrowers in maintaining and continuing operations and ensuring future credit. FSA also conducts outreach to inform farmers and ranchers about the availability of USDA farm and farm loan programs. The goal of the outreach program is to make programs and services accessible to all and to ensure that all customers receive equal and timely access to all of FSA's programs and services. FSA places special emphasis on the outreach to underserved customers, recognizing that certain groups have not participated in, or have received limited benefits from, FSA's programs.

13. FSA administers a variety of farm credit programs through FLP, including those authorized by the Consolidated Farm and Rural Development Act, as amended (the "CONACT"). *See* 7 U.S.C. §§ 1921, *et seq.*; 7 C.F.R. § 2.42(a)(28). Like its predecessor the Farmers Home Administration (FmHA), FSA makes farm credit available to farmers who may not otherwise obtain it from commercial institutions. The objective of these programs "is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after sustaining substantial losses as a result of a designated or declared disaster." 7 C.F.R. § 761.1(c).

14. FLP loans support farmers in a variety of ways. For example, farm ownership loans can be used to purchase or expand a farm or ranch. 7 U.S.C. § 1923. These loan funds can help pay closing costs, subsidize constructing or improving buildings on the farm, or help conserve and protect soil and water resources. Operating loans may be used to purchase livestock, farm equipment, feed, seed, fuel, farm chemicals, insurance, and other operating expenses. 7 U.S.C. § 1942. Operating loans may also be used to pay for minor improvement to buildings, costs associated with land and water development, family living expenses, and to refinance debt under certain conditions. *Id.* . Microloans are designed to meet the needs of small and beginning farmers, or for non-traditional and specialty operations by easing some of the requirements and requiring less paperwork. 7 U.S.C. § 1943(c). Down

payment loans can partially finance the purchase of a family size farm or ranch and are available only to eligible beginning farmers and ranchers and/or minority and women applicants. 7 U.S.C. § 1935. Youth loans can provide operating money for young people between the ages of 10 and 20 years old who need assistance with an educational agricultural project. 7 U.S.C. § 1941. Emergency loans help farmers and ranchers recover from substantial production and physical losses due to a required quarantine, drought, flooding, and other natural disasters and emergencies. 7 U.S.C. § 1961. Conservation loans support conservation practices on farms and ranches that help protect natural resources throughout the United States, such as reducing soil erosion and improving water quality. 7 U.S.C. § 1924.

15. FSA accomplishes its credit mission through two distinct delivery mechanisms: direct and guaranteed loan programs. Direct farm loans are made and serviced by FSA staff, whereas guaranteed farm loans are originated and serviced by qualified commercial, cooperative, or nonprofit lenders. While there is some overlap in their respective functions, direct loan programs are broadly intended to assist those deemed underserved by credit markets because of cash flow feasibility, security, or creditworthiness concerns, or a lack of available agricultural credit in the applicant's area. Guaranteed programs are broadly intended to assist farmers who do not meet the lender's underwriting criteria or when lenders lack the liquidity necessary to fund otherwise creditworthy applicants. Without the direct and guaranteed loan programs some creditworthy farmers or underserved groups would be unable to obtain credit or would have to accept less favorable loan terms.

16. Differences in general eligibility criteria, loan size limits, and loan purpose requirements between the direct and guaranteed programs are reflective of their somewhat different missions. The agency provides credit to agricultural producers who are unable to receive private, commercial credit at reasonable rates and terms. For example, most CONACT loans require that a borrower be "unable to obtain sufficient credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time."

7 U.S.C. § 1983.³ However, a qualified guaranteed loan applicant must have been unable to obtain credit from private lenders at competitive rates and terms without the presence of a guarantee. Meanwhile, for most loans a qualified direct loan applicant must have been unable to obtain credit from private lenders at competitive rates and terms even with the presence of a guarantee. Such differences in borrower eligibility make it more likely that direct lending programs serve more economically disadvantaged farmers.

17. Most of FLP's farm loans also require that the borrower be, or become, the owner of not larger than a family farm. *See, e.g.*, 7 U.S.C. § 1922(a)(1)(C) (requiring that a farm ownership loan borrower must "be or will become owner-operators of not larger than family farms"). Typically, family members must provide most of the day-to-day labor and management for the farm. This family farm requirement results in FLP funding being targeted towards smaller farms.

18. In addition, the direct program's smaller loan limits make it more likely that direct programs serve smaller farms which are more likely to be economically disadvantaged. For example, the maximum loan limit for a direct farm ownership loan is \$600,000, whereas the limit for a guaranteed loan is set at \$1,750,000 (increased yearly to account for inflation). 7 U.S.C. § 1925.⁴

19. Direct and guaranteed loan funds are also targeted to groups USDA determines, based on statutory criteria, to be underserved, resulting in an allocated share of loan funds going to farmers meeting beginning and socially disadvantaged farmer qualifications. The CONACT requires USDA to set annual target participation rates and reserve sufficient loan funds, on a county wide basis, taking into account the portion of the population of the county made up of such groups, to ensure that members of socially disadvantaged groups (which includes women under the CONACT definition of

³ Conservation loans are not subject to such a requirement. 7 U.S.C. § 1924(g). However, since USDA has not received an appropriation for direct conservation loans since FY 2011, and has only approved a handful of guaranteed conservation loans since that time, there are only a few FLP loan borrowers that do not meet this test for credit. FLP completes credit quality reviews on each loan officer yearly to ensure compliance with applicable program requirements.

⁴ There are also maximum loan terms applicable to each type of loan. For example, farm ownership loans are capped at 40 years, *see* 7 C.F.R. § 764.154(b), with operating loans capped at 7 years. *Id.* 764.254.

this term) will receive farm ownership loans and will have the opportunity to purchase or lease inventory farmland. 7 U.S.C. § 2003(a); 7 U.S.C. § 2003(c) (target participation rates for operating loans). Non-reserved funds can also be used by members of those groups. There are similar requirements to reserve funds for qualified beginning farmers and ranchers, and for direct loans, for the down payment loan program and joint financing arrangements. *See* 7 U.S.C. § 1994(b)(2).

20. Irrespective of the delivery mechanism, these federal loan programs are generally intended to serve as temporary and not permanent credit sources. “The programs are designed to allow those who participate to transition to private commercial credit or other sources of credit in the shortest period of time practicable through the use of supervised credit, including farm assessments, borrower training, market placement, and borrower graduation requirements.” 7 C.F.R. § 761.1(c). Graduation to commercial credit, for the direct program, is encouraged through time limits on borrower eligibility and periodic reviews. Further, under the CONACT, FSA is required to conduct an annual review of borrowers who meet certain financial standards to determine whether “a borrower would be able to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender at reasonable rates and terms for loans of similar purposes and period of time.” 7 U.S.C. § 1983a(f)(2). If FSA determines that borrower could obtain such a guaranteed loan, FSA is to assist the borrower in applying for a guaranteed loan and the borrower must agree to apply for and accept such loan. *Id.*; 7 U.S.C. § 1983(3). Guaranteed credit is seen as a first step to graduation from federal credit (direct lending programs) to commercial sources of credit. FSA is required to “promote the goal of transitioning borrowers to private commercial credit and other sources of credit in the shortest period of time practicable” using a number of programs to assist in graduation. 7 U.S.C. § 1993(a); *see* 7 U.S.C. § 2006a (borrower training program); 7 U.S.C. § 2006b (loan assessment process); 7 U.S.C. § 2006c (supervised credit training of employees); 7 U.S.C. § 2006d (market placement program).

21. A large share of direct and guaranteed loans are made to groups deemed to be marginally creditworthy by private sector lending standards. Direct loans are typically much smaller in size and reflect the smaller family farming clientele that they serve. Generally, FSA guaranteed loans go to groups who are more creditworthy than FSA direct borrowers, yet guaranteed borrowers are

still unlikely to meet commercial lending standards in order to obtain loans at reasonable rates and terms without a government guarantee.

22. By design, direct loan programs serve higher-risk applicants than the guaranteed-loan program. Compared to guaranteed borrowers, direct borrowers generally carry greater amounts of debt relative to their assets, have lower net worth, are more likely to have cash flow difficulties, and operate smaller family farms. These borrowers are unable to meet commercial credit standards and would likely have had difficulty either continuing or beginning in farming without access to direct loan programs. In FSA's experience, the direct lending delivery system tends to more often serve groups considered socially or economically disadvantaged. Therefore, a much higher share of total direct lending goes to socially disadvantaged farmers and beginning farmers than in the guaranteed loan programs.

23. Notably, the higher default probabilities and servicing costs associated with direct loans discourage commercial lenders from serving many within this higher-risk clientele without further incentives and/or subsidies. Even with a complete federal loan guarantee, commercial lenders may be reluctant to serve many high-risk direct borrowers because greater loan servicing costs would render the loans unprofitable.

24. Sometimes a farmer becomes unable to make payments on his or her loan as scheduled. When faced with that situation, most lenders will consider whether they should foreclose on the loan or restructure the loan. Restructuring means somehow changing the payment schedule so that it is within the farmer's means. Restructuring can include changing the timing of payments, extending the loan term, reducing the interest rate on the loan, or even reducing the total amount that the farmer owes. Generally, restructuring allows a lender to collect more than the lender would collect in a foreclosure. "Primary loan servicing" is FSA's term for its restructuring programs. One of FSA's long-standing goals has been to keep family farmers on their farms. This goal is also set by statute in the CONACT, which allows for modification of delinquent farmer program loans within statutory requirements "to the maximum extent possible . . . to ensure that borrowers are able to continue

farming or ranching operations.” 7 U.S.C. § 2001(a)(2). The FSA primary loan servicing programs have helped FSA to achieve that goal.

History of Discrimination in FSA Programs

25. In 1965, the U.S. Commission on Civil Rights (“Commission”) issued a report in which it found discrimination at USDA in program delivery and employment. With respect to the FmHA (the predecessor agency to FSA), it found “a different kind of service to the two races,” Black and white. Thus, white farmers, “[a]ided by Federal loans and technical advice, . . . increasingly diversified their crops and applied modern farming practices,” while Black farmers were increasingly displaced. Moreover, even when FmHA programs did reach Black farmers, the level of assistance provided to them was consistently inferior; for instance, Black farmers would receive smaller loans and thus have fewer opportunities for capital investments. The Commission found that, in each economic class, the average loan size for whites was larger than it was for Blacks. Moreover, the average loan size for poorer white farmers increased as net worth decreased. On the other hand, Black farmers were loaned lower amounts of funding as their level of net worth decreased.

26. In 1982, the Commission issued a follow-up report that depicted the devastating but inevitable results of such sustained historical discrimination. The report detailed numerous complaints filed against the FmHA, alleging that Black farmers “[we]re subjected to disrespect, embarrassment, and humiliation by FmHA officials” and a range of discriminatory actions, including: denying Black farmers the opportunity to submit loan applications; awarding them loans in lower amounts than requested; failing to give them the full loan amount actually awarded; accelerating loan repayment schedules without explanation; applying loan payments to the wrong accounts, so as to pay off low-interest rather than high-interest loans; and contacting creditors and other businesses to inform them that no loans will be made to these farmers, thereby preventing them from obtaining other credit, goods, and services needed to continue their farm operations; and foreclosing and selling off properties of Black farmers at a higher rate than white farmers. The Commission emphasized that these disparities were leading to a rapid loss of Black-owned farmland, expressing a sense of urgency over the possibility of the “extinction of black farms in this country” absent “immediate measures” to

counter bias and historical discrimination. There was strong evidence supporting the Commission's concern over the loss of Black farms. The Commission found that between 1970 and 1980, Black-operated farms had declined "57 percent—a rate of loss 2 1/2 times that for white-operated farms"—and "almost 94 percent of the farms operated by blacks ha[d] been lost since 1920.

27. In 1997, the USDA Office of the Inspector General conducted an audit of loan programs and published its findings in a report entitled, *Minority Participation in Farm Service Agency's Farm Loan Programs – Phase II*. The audit looked at, among other things, loan servicing decisions made in 11 states and 33 counties in the decade following the enactment of the Agricultural Credit Act of 1987. The audit found that FSA's loan-servicing decisions made from January 1, 1989, through March 3, 1997, disproportionately benefitted nonminority farmers, even though minority borrowers were experiencing higher rates of delinquency. OIG's audit specifically compared the rates at which minorities and non-minorities received two or more loan-servicing decisions during the applicable time period and concluded that non-minority farmers received 85 percent of the multiple servicing decisions while minorities, with 46 percent of their accounts in these categories, received only 15 percent of multiple Agency efforts to avoid serious delinquency and potential foreclosure. In 2005, OIG published a follow-up report that examined progress on its 1997 recommendations and observed that FSA Civil Rights had not conducted program compliance reviews for over five years, were not effective at monitoring the progress of program civil rights complaints, and that the FSA office of outreach did not evaluate or monitor State or County office outreach activities or provide any guidance on reaching minority farmers.

28. In 2011, USDA contracted with an outside law firm, Jackson Lewis, to conduct a qualitative assessment of the delivery of technical and financial assistance. The Jackson Lewis report reiterated the findings that FSA outreach efforts are generally known only to employees holding a select few job positions in the field, were not linked to performance ratings or job duties generally, and were not systematically evaluated to determine whether certain outreach methods were more successful than others. The Jackson Lewis report also had a low opinion of FSA's outreach efforts, particularly among Farm Programs personnel at the State and County Office level, and FLP

personnel (primarily at the County Office level), that potentially negatively impacted the delivery of service to socially disadvantaged customers and potential customers. In fact, the report indicated “the term ‘outreach’ is widely misunderstood by field personnel” and is “regarded as a task that takes time away from their ‘real duties.’”

29. Recently, in its 2019 report on credit and outreach to socially disadvantaged borrowers, the Government Accountability Office (GAO) reported that “[o]n average, farms for which an SDFR was the primary producer (SDFR farms),” which in the GAO’s definition included women, “were smaller and brought in less revenue than non-SDFR farms in 2017.” Although SDFR farms represented 30% of all farms, they operated only 21% of all farmland and accounted for only 13% of the market value of agricultural products sold in 2017.

30. The GAO further noted that “[a]bout 55 percent of SDFR farms had fewer than 50 acres, and 88 percent had less than \$50,000 in total sales and government payments.”

Discrimination Settlements and Claims Processes

31. Beginning in 1997, Black, Native American and Hispanic farmers initiated legal actions, some of which were certified as class actions, alleging that USDA had systematically discriminated against them on the basis of race and ethnicity in the administration of farm loans and other benefits. In general, the minority borrowers in each of these actions alleged that (1) USDA willfully discriminated against them on the basis of their race or ethnicity when they sought to apply for farm program loans, loan servicing, and farm program benefits; and (2) when they filed administrative discrimination complaints with USDA to seek redress for that discrimination, USDA failed to adequately respond, instead delaying review, conducting meaningless investigations, or failing to take any investigative action whatsoever to resolve the complaints.

32. In 1997, two putative class-action lawsuits entitled *Pigford v. Glickman* (“*Pigford I*”) and *Brewington v. Glickman* (“*Brewington*”), respectively, were filed on behalf of groups of Black farmers. Those lawsuits asserted that the USDA had systematically discriminated against Black farmers on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit

Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act. The *Brewington* case was later consolidated with *Pigford I*, and the court certified the case as a class action. The class covered Black farmers who alleged certain types of discrimination by USDA between 1981 and 1996.

33. The *Pigford I* case later settled in 1999. The terms of the settlement were outlined in a Consent Decree entered by the Court on April 14, 1999. The Consent Decree established a two-track dispute resolution process for those seeking relief. Track A provided a monetary settlement of \$50,000 plus the potential for partial debt relief for those loans within the class period that were deemed by the neutral adjudicator to be impacted by discrimination. Track A had fewer documentation requirements for claimants. Alternatively, class members could seek a larger payment by presenting documentary evidence of their claims to a third-party arbitrator who made a binding decision. The Consent Decree also provided limited injunctive relief in the form of one-time priority consideration for one loan application or purchases of inventory property held by the Agency.

34. Eligible claimants were required to file their claims with the case administrator by October 1999. While approximately 22,700 claimants filed claims before the October 1999 claims deadline, approximately 61,000 additional individuals requested permission to file claims after the October 12, 1999, claims deadline but before the September 15, 2000 "late-filing" cut-off date. Fewer than 3,000 of the roughly 61,000 "late-filers" were found to have demonstrated the required "extraordinary circumstances" for receiving extra time to file their claims. As a result, more than 58,000 "late-filers" did not have their discrimination claims initially heard.

35. In 2010, Congress passed legislation to reopen the *Pigford I* claims settlement process for certain late filers. Later, Congress passed legislation extending the statute of limitations to bring discrimination claims against USDA. This allowed certain Black farmers procedurally shut out of the *Pigford I* claims process to bring claims in federal court based on discrimination occurring between 1981 and 1996. This action was likewise certified as a class action and is known as "*Pigford II*." That case settled, and the parties agreed to a similar claims process as was adopted in *Pigford I*.

36. Meanwhile, in 1999, a group of Native American farmers brought similar claims in federal court alleging a pattern of discrimination by FSA in the administration of its farm loan programs and in FSA's resolution of administrative discrimination claims. That case was also certified as a class action covering all Native American farmers and ranchers who farmed or ranched between 1981 and 1999, applied to the USDA for participation in a farm program during that time period, and filed a discrimination complaint with the USDA (the *Keepseagle* case). After class certification, the parties agreed to settle the case and the court approved a settlement agreement that established a two-track settlement claims process that was similar in many respects to the claims processes in *Pigford I* and *Pigford II*. However, only approximately 3,600 claimants filed successful claims in the *Keepseagle* class action and \$380 million was left over from what USDA had set aside as relief for successful claimants. Class counsel identified the age of the claims, the age of the farmers, and a profound distrust of USDA as the main reasons that the participation rate from the class was smaller than anticipated.

37. In 2000, a group of Hispanic farmers also brought suit alleging a similar pattern of discrimination by FSA against Hispanic farmers. The cases were consolidated in one action, *Garcia v. Glickman*, but it was not certified as a class action. However, USDA agreed to establish a voluntary administrative claims process similar to the ones created in *Pigford I* and *Keepseagle* to allow for a more efficient resolution of the plaintiffs' discrimination claims outside of federal court. That claims process covered Hispanic farmers alleging discrimination between the years 1981 and 2000. Approximately 2,985 Hispanic claimants participated in that alternative claims process.

38. Most of the claimants who prevailed in the *Pigford*, *Keepseagle*, and *Garcia* claims resolution processes were individuals who claimed to have applied to USDA and had their applications denied or claimed to have been denied an application in the first place. Most successful claimants in both processes thus had no existing outstanding farm loan debts with USDA. As a result, the total debt relief provided in these processes was generally concentrated in a very small portion of the classes. Additionally, because the settlements were designed to remedy debts from the specific loan program that was affected by discrimination, few claimants received complete debt forgiveness. As a result, while the claims processes provided valuable relief to many claimants, those claimants who had

outstanding debts generally still had debts with USDA after the claims programs concluded. Many socially disadvantaged farmers in FSA's loan portfolio were still not in a position to pay their debts and remained delinquent.

USDA Efforts to Remedy Lingering Effects of Discrimination

39. Aside from the administrative claims processes described above, USDA has attempted to address or remedy the documented history of discrimination in its farm loans programs, and that history's lingering effects, in a variety of ways, including by creating special outreach programs, entering into cooperative agreements with local organizations, establishing administrative processes for discrimination complaints, and otherwise adjusting the implementation of its programs.

40. For example, per the recommendations of the Civil Rights Action Team and the Commission on Small Farms, USDA farm loan programs permanently removed the county committees from loan making decisions. Congress subsequently enacted legislation authorizing the Secretary to appoint socially disadvantaged members to county committees associated with the administration of Farm Programs, whose members are otherwise selected through county elections.

41. Between 1999 and 2020, USDA improved farm loan programs by streamlining its regulations, separating its farm lending regulations from the regulations of a separate USDA agency (Rural Development), and substantially updated its computer systems by transitioning to the Direct Loan System. USDA can now accurately track participation rates and timeliness of application processing as well as the timeliness of farm loan servicing actions.

42. In 2008, USDA created the Office of Advocacy and Outreach (currently the Office of Partnerships and Public Engagement (OPPE)) as a Department-wide office. OPPE is USDA's chief office tasked with serving beginning, minority and other underserved farmers. Congress funded OPPE in part to address systemic deficiencies in the delivery of USDA programs and services to minority and socially disadvantaged farmers and ranchers. Its mission is both to strengthen the Department's advocacy on behalf of small farm and new farming opportunity policies/programs, as well as to enhance the Department's outreach to beginning and socially disadvantaged farmers. OPPE is also charged with working across USDA agencies to coordinate their outreach activities.

43. OPPE at USDA also administers a grant program supporting outreach and assistance for socially disadvantaged farmers, also known as the 2501 Program. This program was created through the 1990 Farm Bill to help socially disadvantaged farmers, ranchers, and foresters, who have historically experienced limited access to USDA programs and services. The program was later expanded to include veterans. It is a grant program for higher education institutions and nonprofit and community-based organization to extend USDA's engagement efforts in these communities. The 2501 Program funds projects that include conferences, workshops, and demonstrations on various farming techniques, farm financial planning, as well as connecting underserved farmers and ranchers to USDA local officials to increase awareness of USDA's programs and services.

44. In 2011, pursuant to statutory requirements, USDA instituted a Receipt for Service requirement that ensures that customers receive a receipt from farm loan programs personnel that describes each benefit or service sought by any inquirer, applicant, or customer, the date of inquiry, and the actions taken or recommended to be taken by FSA and other service center agencies. This measure was instituted in part to improve accountability in processing farm loan applications and primary loan servicing requests. It applies to Farm Programs and other USDA agencies to ensure customers and potential customers are being properly served in local offices.

45. To support USDA-wide coordination on outreach and technical assistance, FSA appointed a National Director of Outreach in 2013. As of 2016, outreach coordinators are now in all States and territories with FSA offices. The FSA Outreach office also performs a vital function in connecting the concerns of producers with farm loan program managers so that programs may be refined and improved to meet the needs of borrowers.

46. In 2012, FSA created a microloan program for operating loans for up to \$35,000 (subsequently increased to \$50,000 in 2014). Microloan programs for farm ownership loans and farm storage facility loans were subsequently established in January and April of 2016. As noted above, microloans are designed to meet the needs of small and beginning farmers, or for non-traditional and specialty operations by easing some of the requirements and requiring less paperwork. Thus, the microloan application process is simpler, requiring less paperwork to complete, consistent with a

smaller loan amount. Requirements for managerial experience and loan security have been modified to accommodate veterans, smaller farm operations, and beginning farmers.

47. In 2015, USDA established the Socially Disadvantaged Farmer and Rancher Policy Research Center at Alcorn State University, and the agency continues to provide funding for its operations. The Policy Research Center was established to collect, analyze, and evaluate data to develop policy recommendations for the protection and promotion of the interests of socially disadvantaged farmers and ranchers. The Center also serves as a public awareness organization that provides education to the public about the history and condition of socially disadvantaged farmers and ranchers.

48. FSA has also made numerous efforts at targeted loan programs over the years to improve the participation rates and outcomes for socially disadvantaged farmers and ranchers. As previously discussed, since 1990, FSA has set target participation rates and reserves funds, to the extent practicable, for members of socially disadvantaged groups. For loans to socially disadvantaged and beginning farmers and ranchers, FSA also guarantees up to 95% of a commercial lender's losses in the event of default to incentive lenders to provide loans to those borrowers. 7 U.S.C. § 2008b. This is above the otherwise applicable maximum guarantee of 90%.

49. In addition, the down payment program assists socially disadvantaged and beginning farmers in purchasing a farm, and only requires a cash down payment of at least 5 percent of the purchase price. *See* 7 C.F.R. § Part 764, Subpart E. FSA will finance 45% to a maximum loan amount of \$300,150. The remaining balance may be obtained from a commercial lender or private party, but if obtained from a commercial lender, FSA can provide up to a 95% guarantee and participating lenders do not have to pay a guarantee fee.

50. FSA has other programs that also encourage the entry or reentry of socially disadvantaged farmers and ranchers into farming or ranching. For example, in selling its inventory property, FSA is required to "maximize the opportunity for beginning farmers or socially disadvantaged farmers to purchase real property." *See* 7 C.F.R. § 767.151(a). The CONACT requires FSA to advertise any inventory property acquired with first priority given to eligible socially

disadvantaged and beginning farmers to purchase the properties at the appraised market value. 7 U.S.C. § 1985(c). Only if there are no offers from eligible beginning or socially disadvantaged farmers within a certain time frame will FSA then sell the inventory property by auction or sealed bid to the general public. *See* 7 U.S.C. § 1985(c)(1)(C).

51. In addition, the Land Contract Guarantee Program was designed to assist beginning or socially disadvantaged farmers and ranchers to obtain farmland. *See* 7 U.S.C. § 1936; 7 C.F.R. § Part 763. FSA guarantees for up to 10 years are offered to the owner of a farm who wishes to sell real estate through a land contract to a beginning or socially disadvantaged farmer or rancher. To be eligible the beginning or socially disadvantaged farmer must be engaged primarily in farming after the guarantee is issued. A land contract is an installment contract between a buyer and a seller for the sale of real property, in which complete ownership of the property is not transferred until all payments have been made. This program incentivizes the sale of family farm real estate to eligible beginning or socially disadvantaged farmers and ranchers because it reduces the financial risk to the seller of buyer default on the contract payments.

Continuing Effects of Past Discrimination

52. Despite USDA's various efforts to remedy the lingering effects of historical discrimination through these various initiatives, minority communities continue to be under-represented in certain USDA programs. Minority farmers are disproportionately less likely to participate in or benefit from certain types of financial assistance that USDA offers in part because minority farmers generally have smaller farms, and therefore receive a disproportionately small share of funds provided through USDA payment programs, many of which, like the recent Market Facilitation Program discussed in more detail below, are based on crop-acreage or are targeted to crops typically grown on large farms.

53. In general, FSA data indicates that minority participants have:

- a. Higher loan application withdrawal and rejection rates due, in part, to difficulty meeting loan standards relative to non-minority applications;

b. Smaller average loan amounts due to minority borrowers having smaller scale operations;

c. Less operating capital overall and less equity in assets due to smaller operations, which makes it difficult to obtain new loans. This may be due to the fact that these borrowers have not had the same access to credit to increase the size of their operations. There is a general lack of generational wealth.

d. Higher delinquency, application withdrawal, and foreclosure rates.

54. While FSA has improved and amplified its data analytics to assess these and other disparities in an effort to continually review and improve its programs, the available information makes clear that differences persist under existing programs.

55. Additionally, the widely publicized history of USDA discrimination has made it difficult for the agency and the communities it serves to overcome distrust:

a. Many minority farming families have personal experiences with discrimination and pass those stories down generation to generation, which makes family members reluctant to interact and participate in FSA programs and creates a cycle of distrust.

b. Current reports, articles, and publications reiterate that trust of USDA, and particularly FSA, continues to be a lingering problem and trust has not improved over time even since the class action settlements.⁵

c. It is widely understood by FSA personnel, including by loan officers, that USDA has not been able to regain its image as a trusted partner for minority communities. Indeed, USDA has explicitly included requirements to “Build Trust” in its performance plans

⁵ These include: *Black Farmers Fear Foreclosure as Debt Relief Remains Frozen*, N.Y. Times (Feb. 21, 2022), <https://www.nytimes.com/2022/02/21/us/politics/black-farmers-debt-relief.html>; *Many Black Farmers Nationwide Struggling to Keep Their Farms Afloat as they Face Disparities Across the Board*, CNN (Dec. 15, 2021), <https://www.cnn.com/2021/12/15/politics/black-farmers-debt-relief-disparities/index.html>; *Black-Owned Farms are Holding on by a Thread*, Eater (Feb. 23, 2021), <https://www.eater.com/22291510/black-farmers-fighting-for-farmland-discrimination-in-agriculture>

for senior level employees.⁶ As Secretary Vilsack noted in his March 25, 2021, testimony before the House Committee on Agriculture, the agency “must establish the support systems to enable socially disadvantaged producers to have the opportunity to succeed. Only with the establishment of such systems, will we be able to finally address the cumulative effect of discrimination and break the cycles that are holding these producers back.”

d. Indeed, USDA provides grants to organizations to improve communication because it recognizes that there is still a lack of trust on the part of minority communities.

56. In USDA’s interaction with community groups, the agency regularly hears about lack of trust for the agency on the part of minority communities and is told that programs are not reaching these communities. FSA hears the same themes in its interactions with actual and potential customers. And this theme appears regularly in correspondence I receive about farm loan programs at USDA, including in Congressional inquiries on behalf of constituents, as well as in correspondence received from program applicants and participants.

57. This lack of trust impacts the effectiveness of USDA’s work when minority farmers interact with FSA.

a. Based on my experience, people are more reluctant to engage with USDA and ask for farm loans in the first instance, and may increase reluctance to engage with USDA on other farm programs. This reluctance to engage is likely, in part, the cause of the higher rate of loan applications withdrawals resulting from incomplete application submissions even after two formal notifications of the documents needed.

b. Even when USDA makes a loan decision based on specified statutory criteria, the lack of trust erodes USDA’s ability to effectively communicate with the applicant in a cooperative manner on ways in which the applicant could improve their chances of success

⁶ For example, employee performance plans for Senior Executive Service positions includes a category titled “Build Trust” which requires that they “[p]rioritize upholding civil rights and building trust with underserved communities, including with Tribal Nations, through equitable and inclusive customer service and actions.”

on future applications. One of the key functions of FSA loan officers is to advise, and lack of trust makes it harder to help minority farmers.

58. As a result, enhancements to outreach programs, additional investments to improve communications and interactions with minority farmers and applicants, automated loan services, and incremental changes to forms and regulations cannot in isolation address the lack of access to capital and the issues related to the dispossession of land that has persisted over many years. And even recent payment programs directed to all farmers have shown substantial failures in reaching socially disadvantaged farmers.

59. For example, the Market Facilitation Program (MFP) provided direct payments to farmers impacted by foreign retaliatory trade practices, resulting in the loss of traditional markets, in 2018 and 2019. However, the program tended to benefit larger farms, and for MFP payees and payments for 2018 and 2019, minorities accounted for an average of 8,733 payees per year (1.4%) and an average of \$116.50 million in payments per year (1%). In addition, the Coronavirus Food Assistance Program (CFAP) provides assistance to agricultural producers impacted by the effects of the COVID-19 pandemic. When it was initially implemented, CFAP 1 had a minority participation rate of 4.4% (3.5% of payments). Prior to being reopened on April 5, 2021, CFAP 2 had a minority participation rate of 4.2% (3% of payments).⁷

60. FSA has taken steps to attempt to remedy these types of deficiencies in its programs. In particular, USDA reopened CFAP 2 from April 5, 2021, to October 12, 2021, to reach a broader set of producers, including socially disadvantaged communities. USDA also committed at least \$2.5

⁷ MFP paid out \$23.1 billion over two years, and CFAP 1 and CFAP 2 combined paid out \$31.1 billion. These were the largest payments made for USDA emergency assistance programs within the recent decade. The named Plaintiffs appear to have received a variety of agricultural subsidies from FSA, including CFAP payments for four of the borrowers and MFP payments for one, totaling thousands of dollars since 2010. According to FSA records, since 2010 Plaintiff Sidney Miller received \$192,290.47 in farm program subsidies, including \$139,235.47 in CFAP payments. Plaintiff Greg Macha received \$2,364, including \$2,259 in CFAP payments. Plaintiff James Meek received \$32,404, including \$26,898 in CFAP payments. Plaintiff Jeff Peters received \$138,063.03, including \$23,984.28 in MFP payments and \$41,333.75 in CFAP payments. Plaintiff Lorinda O'Shaughnessy received \$1,447 in farm program subsidies.

million to establish partnerships with third-party organizations with strong connections to socially disadvantaged communities to ensure robust technical assistance during the application process. As a result of FSA's efforts, the minority participation rate during that reopening period jumped to 16% and equated to a 15% payment rate; however, the overall participation rate for CFAP 2 only increased to 4.5% and the percentage of payments only increased to 3.2%, so the higher percentage of minority participation in the reopened program overstates the increase in participation in raw numbers. The reopening of CFAP 2 was a unique opportunity in which the agency had discretion to reopen a recent program in order to address perceived gaps in distribution. Unfortunately, it is not possible to similarly address past inequities in Farm Loan Programs that have had longstanding lingering effects through incentive programs and increased outreach alone. This is especially true where, unlike in the Section 1005 program, "reopening" loan programs would not change a borrower's cash flow and feasibility assessment to allow those borrowers to obtain new loans, resolve current delinquencies, or provide a release of liens to free up equity.

USDA's Implementation of Section 1005

61. Section 1005 of the American Rescue Plan Act ("ARPA"), enacted on March 11, 2021, authorizes USDA to pay up to 120% of the outstanding indebtedness, as of January 1, 2021, of certain FSA Direct and Guaranteed Farm Loans and Farm Storage Facility Loans held by socially disadvantaged farmers or ranchers.

62. The Direct and Guaranteed Farm Loans covered by Section 1005 are those discussed above that are administered under the CONACT: farm ownership loans, operating loans, emergency loans, and conservation loans.

63. Section 1005 of the American Rescue Plan Act (ARPA) also defined the "farm loans" it covered as including "a Commodity Credit Corporation Farm Storage Facility Loan." Farm Storage Facility Loans (FSFLs) provide low-interest financing for producers to build or upgrade facilities to store, handle, and/or transport certain eligible commodities that they produce. *See* 7 C.F.R. Part 1436. This program is authorized by and funded through the Commodity Credit Corporation (CCC) Charter

Act. 15 U.S.C. § 714c(b) and 714b(h); *see also* 7 U.S.C. § 8789; 7 U.S.C. § 7971. However, the CCC does not have its own employees, so the FSFL program is administered by FSA.

64. An eligible borrower of an FSFL is a producer of an eligible commodity who is a “landowner, landlord, operator, producer, tenant, sharecropper, or processor of domestically produced sugarcane or sugar beets” with a “satisfactory credit history,” “an ability to repay,” and “demonstrates a need for increased storage capacity as determined by CCC,” among other eligibility requirements. *See* 7 C.F.R. § 1436.5. An FSFL term may not exceed 12 years and is limited to \$500,000 per loan. *See* 7 C.F.R. § 1436.7 and 1438.9. Unlike most FLP loans, there is no requirement that FSFL borrowers be unable to obtain sufficient credit elsewhere at reasonable rates and terms in order to be eligible for an FSFL. FSFLs must be approved by the local FSA state or county committee. *See* 7 C.F.R. § 1436.9. While FSFLs are generally available to any farmer, these loans account for less than 1% of the total value of loans potentially covered by Section 1005.

65. Section 1005(a)(1) of ARPA provides “for such funds as may be necessary, to remain available until expended” to make the ARPA loan payments.

66. Section 1005(a)(2) of ARPA permits the Secretary of Agriculture to provide payments to a lender directly, to an eligible applicant, or a combination of both.

67. Section 1005(b)(3) of ARPA provides that the term “socially disadvantaged farmer or rancher” has the meaning given to the term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. § 2279(a)).

68. Section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. § 2279(a)) defines a “socially disadvantaged farmer or rancher” as someone “who is a member of a socially disadvantaged group,” which is further defined as “a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.”

69. The 120 percent payment authorized by Section 1005 includes 100 percent toward loan indebtedness as of January 1, 2021, and an additional 20 percent of that indebtedness to eligible recipients.

70. FSA published a Notice of Funds Availability (“NOFA”) in the *Federal Register* (86 FR 28329) on May 26, 2021 (“May 2021 NOFA”), announcing the availability of funds for eligible borrowers with eligible direct loans as authorized by Section 1005 of ARPA, with the exception of direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset.

71. The May 2021 NOFA announced that a subsequent NOFA was anticipated within 120 days, or by September 23, 2021, which would address guaranteed loans and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset. However, in light of the preliminary injunctions, FSA has delayed publication of this subsequent NOFA.

72. Under the May 2021 NOFA, members of socially disadvantaged groups are: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics or Latinos. The Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation.

73. Under the provisions of the May 2021 NOFA, eligible recipients do not need to take any action until receipt of a payment notification letter from FSA (form FSA-2601). FSA is identifying eligible recipients whose demographic designations in FSA systems qualifies them as socially disadvantaged based on race or ethnicity. Direct and guaranteed loan borrowers who have not previously provided demographic designations to FSA or believe their records are not accurate can contact their local FSA offices to verify and/or update their designations.

74. FSA anticipated sending a payment notification letter to most eligible recipients under the May 2021 NOFA within 45 days of the publication of the NOFA, or by July 10, 2021. Eligible recipients had the option to decline or accept the payment; if the recipient accepted the payment, the amount to pay off the eligible direct loans would be applied directly to the eligible recipient’s FSA loans and the additional 20 percent, which can be used by recipients to offset tax liabilities, would be paid directly to the eligible recipient.

75. Payments for the following eligible recipients will be addressed in the subsequent NOFA when published by FSA:

a. As of February 15, 2022, FSA identified at least 2,624 accounts for eligible guaranteed Farm Loan Programs loan recipients with 3,922 outstanding eligible loans. The total unpaid principal and interest on those loans as of January 1, 2021, was estimated at \$1,625,293,687.

b. As of February 11, 2022, FSA has identified 762 accounts for eligible direct Farm Loan Programs recipients with 1,502 loans with no collateral remaining that have been referred to the Department of Treasury for collection. The total unpaid principal and interest of these loans is estimated at \$56,169,936.

76. Consistent with court orders, USDA is not currently disbursing Section 1005 loan payments to eligible recipients. Also consistent with those orders, USDA is identifying eligible recipients of loan payments, sending payment notification letters, and carrying out all other administrative tasks to be ready to swiftly disburse payments whenever an injunction against doing so is lifted.

77. As of January 31, 2022, the ratio of White borrowers who are delinquent on an eligible FSA loan was 11.9%, compared to 50.3% of African American/Black borrowers, 22.9% of Asian borrowers, 24% of American Indian/Alaskan Natives, and 68.9% of Hispanic borrowers.

78. As explained in the Frequently Asked Questions posted on the USDA website at <https://www.farmers.gov/americanrescueplan/arp-faq>, at this time USDA is not taking any adverse actions on any eligible direct borrowers who do not make payments. This forbearance is based on a January 27, 2021, announcement that the USDA has temporarily suspended past-due debt collections and foreclosures for distressed borrowers under the Farm Storage Facility Loan and the Direct Farm Loan programs due to the pandemic. *See* <https://www.usda.gov/media/press-releases/2021/01/27/usda-temporarily-suspends-debt-collections-foreclosures-and-other>. However, the Debt Collection Improvement Act (DCIA) prohibits loans to those delinquent on a Federal debt, and therefore a recipient's eligibility for student loans, loans from the Small Business Administration,

or loans from other Federal agencies could be adversely impacted by failure to make payments on eligible USDA loans before they are paid off under ARPA Section 1005. Consistent with the January 2021 announcement the Secretary has waived this provision of the DCIA for delinquent FLP borrowers to be able to obtain FSA's Marketing Assistance Loans and Farm Storage Facility Loans, but the CONACT prohibits delinquent FLP borrowers from obtaining direct operating loans. *See* 7 U.S.C. § 2008h(a).

Necessity of Implementing § 1005 to Remedy Lingering Effects of Past Discrimination

79. As of February 11, 2022, FSA identified 18,519 Farm Loan Program direct loan accounts with 35,344 outstanding direct loans eligible for Section 1005 payments. The total unpaid principal and interest on these loans outstanding as of January 1, 2021, was \$2,924,512,191. This amount is separate from the 3,922 outstanding eligible guaranteed loans, some of which may be held by some of the same individuals.

80. As of February 9, 2022, FSA identified 385 eligible Farm Storage Facility Loan accounts with 517 outstanding direct eligible loans. The total unpaid principal and interest on these loans outstanding as of January 1, 2021, was \$29,049,632.

81. Based on currently available information, USDA estimates that the loans covered by the May 2021 NOFA comprise 84% of the total number of ARPA-eligible accounts and 63% of the total dollar amount of projected payments that will be made to eligible accounts once Section 1005 is fully implemented.

82. Direct financial assistance to these recipients is necessary to assist in remedying some of the persistent effects of past USDA discrimination which cannot be remedied by race-neutral programs alone.

83. Experience with MFP and CFAP indicates that race-neutral programs do not always reach minority farmers equitably. Reopening programs like CFAP is not always possible, and does nothing to improve position of those people who are ineligible for the program based on its criteria. Direct payment improves both repayment ability and equity in available security, making it easier for

recipients to receive loans. This will increase trust in USDA, and thereby enhance participation in future programs.

84. Reports on reasons for rejections reflect that for Black applicants, the most common reason for loan rejection was unacceptable credit history in recent years, whereas for White and other applicants, the primary reason for denial was their operating plan did not cash flow. A direct impact of past discrimination may be long term impact on credit history which would not be remedied by reopening more loan programs, as it will take time to establish an acceptable credit history.

85. Direct financial assistance through debt payment frees up funds for expansion of operations that many socially disadvantaged farmers could not achieve in prior years, helps increase equity position and operating capital, and provides a realistic opportunity to graduate to commercial credit sources in the near future.

86. Separately, § 1005 signals that the agency intends to help minority farmers recover from the financial effects of past discrimination, showing a level of commitment from USDA to work with minority farmers and ranchers, establishing a base of trust that FSA can continue to build into beneficial relationships with these customers. This would allow FSA to better assist all its borrowers to get to the position where they can graduate to commercial credit.

87. USDA's implementation of § 1005 takes these considerations into account and is specifically designed to achieve the goal of increasing participation by minority communities in other USDA programs by rebuilding trust between minority communities and the agency.

88. For example, more minority farmers came forward to update their data with FSA, indicating that these borrowers felt more comfortable reporting their race and ethnicity to the FSA. FSA officers have reported that some borrowers admitted that they had not previously reported, or accurately reported, their race and ethnicity in the past due to concerns that they would not be treated fairly by FSA.

89. Listening tour sessions USDA conducted after the passage of § 1005 also confirm that community organizations and minority farmers saw § 1005 payments as aid that would help rebuild trust between USDA and minority communities. Community members noted the difficulty for

farmers of color to acquire land, get access to funding and loans, and to get the necessary capital to get off the ground, which has historically been made harder by the USDA. Community members were encouraged by the passage of Section 1005 as a necessary first step representing an attempt by USDA and Congress to address the disproportionate impact of the debt burden that farmers of color face because of historic discrimination in agricultural credit. And community organizations looked forward to working with FSA to translate the programs envisioned in Section 1006 into reality. These groups expressed to FSA that the debt relief payments under Section 1005 were seen as a necessary reset financially for the farmers and also of their relationship with USDA, but minority farmers and ranchers had been made promises by USDA before and felt that USDA has not held up to their end of the bargain. A failure to implement this program will only further the eroded trust between the USDA and socially disadvantaged communities and be one more broken promise to these communities.

90. Based on my extensive experience with farm loan programs, I anticipate that implementing § 1005 would prove uniquely effective in enabling USDA to extend the reach of its other financial programs. As noted above, making a payment would give individuals a sense that FSA is acknowledging past issues and demonstrate that FSA is committed to working with minority communities. This, in turn, would make minority farmers more likely to engage with FSA in the future.

91. Conversely, further delay in ARPA payments would continue to create confusion and undermine trust in USDA. Delay in payments could also result in the foreclosure on the farms of the eligible recipients. African American, American Indian/Alaskan Native, Asian, Pacific Islander, and Hispanics accounted for 20-24% of foreclosures in Fiscal Year 17 through Fiscal Year 19 even though they only accounted for 9-10% of the direct borrowers in the loan portfolio. While FSA has suspended acceleration and foreclosure on direct loans due to COVID-19, FSA cannot prevent other lenders from pursuing foreclosure action. Third party foreclosure accounted for 40-65% of the foreclosure on FSA borrowers during Fiscal Years 2016 through 2020.

92. Delays in Section 1005 payments will also suspend the closing of new FSA loans to ARPA-eligible borrowers when loan limits will be exceeded if Section 1005 payment are not made, and may limit the borrower's ability to make scheduled payments on ARPA-eligible loans.

93. The cost of extending the Section 1005 program to include all non-Hispanic white farmers is estimated to cost approximately \$36 billion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: March 11, 2022

WILLIAM COBB Digitally signed by WILLIAM
COBB
Date: 2022.03.11 08:57:46 -05'00'

William D. Cobb

EXHIBIT B

Expert Report of
Alicia M. Robb, Ph.D.

In the matter of
Miller v. Vilsack, 4:29-cv-595-O (N.D. Tex.)

January 7, 2022

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I. Summary of Principal Conclusions

I, Alicia Robb, am an economic consultant and have previously served as an economist with several government agencies: the U.S. Small Business Administration (Office of Economic Research in the Office of Advocacy), the Federal Reserve (Board of Governors), and the U.S. Census Bureau (Center for Economic Studies). A full statement of my qualifications follows the Executive Summary of this report, which briefly describes my conclusions. I was retained by counsel for Defendant, the Secretary of Agriculture, who leads the United States Department of Agriculture (“USDA”), to evaluate the anecdotal and statistical evidence of discrimination against minority farmers in USDA’s lending programs and provide an opinion on whether there are any lingering effects of this past discrimination that disadvantage individual groups of minority farmers in the present day.

Based on my review of historical program information, numerous non-governmental and governmental reports, including Government Accountability Office (“GAO”) and Office of Inspector General (“OIG”) reports and audits, census data, loan data, and various other documents described in Appendix B, I have reached the following conclusions:

- 1) These materials and data provide substantial evidence of past discrimination against minority farmers in USDA loan programs.
- 2) These materials and data reveal large and adverse disparities between minority and non-minority farmers today.
- 3) These disparities cannot be explained solely by differences between minority and non-minority farmers or other factors untainted by discrimination.
- 4) Instead, these disparities are consistent with what one would expect given both the well-established historical discrimination in USDA’s loan programs and the nature of credit markets and the agricultural sector.

II. Executive Summary

This case involves the claim that white farmers are being discriminated against because the debt relief provided in Section 1005 of the American Rescue Plan Act (“ARPA”) is being provided to farmers of certain races and ethnicities (“minority farmers”). I understand that the Government contends that debt relief to minority farmers is necessary to remedy the lingering effects of prior discrimination against minority farmers in USDA lending programs and to ensure that the allocation of government funding does not serve to perpetuate the effects of that discrimination. I have been asked to review the evidence of discrimination against minority farmers in USDA’s lending programs, evaluate the data related to the status of minority farmers today, and opine on whether the data are consistent with the expected effects of the documented history of discrimination against minority farmers in USDA’s lending programs. Based on my review and analysis, I have concluded that they are.

USDA has historically discriminated against minority farmers and ranchers in USDA farm loan programs, as amply demonstrated by evidence in numerous reports issued by the U.S. Commission on Civil Rights, the GAO, and the USDA OIG; reports funded by USDA itself; in Congressional testimony; and in numerous lawsuits that have resulted in payments to thousands of minority farmers totaling billions of dollars.

This discrimination manifested in many ways throughout the loan cycle, including disparate treatment in: 1) outreach and education about existing loan programs and eligibility; 2) assistance with loan applications; 3) processing time for applications; 4) loan application approvals; and 5) post-disbursement loan servicing. In addition, various reports indicated that minority farmers were given additional requirements, such as needing a joint signature of an FSA representative for withdrawing funds for expenses, which were not typically imposed on white

farmers. The evidence tells a clear story: For decades, USDA discriminated against minority farmers in numerous ways in administering its loan programs.

That discrimination has been to the obvious and continuing detriment of minority farmers. The principal purpose of USDA's lending programs is to provide credit to farmers otherwise excluded from private credit markets so that those farmers can invest in, grow, and improve their farms—up to the point where they can then “graduate” from USDA programs and obtain credit in private markets. A major consequence of discrimination in USDA lending programs was that minority farmers who were already struggling were denied the very help they needed, while white farmers were given that help. Thus, minority farmers were unable to expand their farms or invest in them to grow their farm businesses, or were pushed out of farming entirely.

The results we see today are entirely consistent with this history of discrimination—which deprived generations of minority farmers of needed credit, payments, and technical assistance to run and expand their farms—and with the nature of an industry reliant on ready and frequent credit. For instance, the diminution of minority participation in farming is apparent. In 1920, minority farm owners made up 14.7% of all farm owners in the United States. By 2017, they made up just 4.3% of all farm owners, and minorities' participation in farming lagged well below what would be expected based on their shares of the general population and rural population. In addition to their underrepresentation in farming, the data show that minority farms are on average smaller and bring in lower revenues. By every metric—acreage, market value of production, government payments, net farm income, per-acre market value, and overall wealth—minority farmers generally lag behind their white counterparts.

Minority farmers may be harmed for decades after a discriminatory act. For example, minority farmers, with less wealth, are more vulnerable to negative shocks such as natural

disasters, poor growing seasons, or economic downturns. This is reflected in higher rates of delinquency and foreclosure among minority farmers today. Many government payment programs are based on crop-acreage or are targeted toward crops primarily grown on large farms, so minorities, who disproportionately have smaller farms, receive less government support. The reduced collateral and income caused by denied loans continue to hinder minority farmers seeking private credit to the present day. Moreover, historical discrimination in USDA loan programs may have caused minority farmers to become “discouraged borrowers” who may be less likely to seek future USDA assistance precisely because of past USDA discrimination and a resultant lack of trust. Data provided by USDA on loan applications and application withdrawal rates show that minority farmers were less likely to apply for USDA loans in the first place and that their loan applications were more likely to be withdrawn when they did apply.

These present-day disparities are consistent with the expected effects of the well-documented and systemic historical discrimination in the provision of USDA loans and technical assistance to minority farmers and are not solely the product of race-neutral factors untainted by discrimination. There are several additional reasons to attribute the present-day disadvantaged position of minority farmers to historical discrimination in USDA’s loan programs. For one, the disparities are large and across several relevant, and interrelated, metrics. Second, the documented discrimination occurred over a long period of time until at least 2010. Given the longevity and recency of the prior discriminatory conduct, together with the investment timeline for agriculture, it is unsurprising that there are still effects of that discrimination only a decade later. Third, Congress and USDA have taken substantial steps to eliminate and remediate historical discrimination, but even as those efforts have had some success, the disparities have persisted. Finally, it is well understood that historical discrimination discourages minority groups that have

been discriminated against from seeking credit, even when they may both need it and objectively qualify for it. That pattern is consistent with the observed data. The data also show that these disparities are not largely explainable by race-neutral factors such as geography and types of agricultural products produced or by race-neutral characteristics of farmers, such as prior experience in farming or number of annual days devoted to farming, which might influence farming outcomes.

In summary:

- 1) The materials and data I reviewed provide substantial evidence of past discrimination against minority farmers in USDA loan programs;
- 2) These materials and data reveal large and adverse disparities between minority and non-minority farmers today;
- 3) These disparities cannot be explained solely by differences between minority and non-minority farmers or other factors untainted by discrimination;
- 4) Instead, these disparities are consistent with what one would expect given both the well-established historical discrimination in USDA's loan programs and the nature of credit markets and the agricultural sector.

The debt relief provided by Section 1005 addresses the lingering effects of discrimination, including by increasing minority farmers' available capital to permit reinvestment in their farm operations, by helping to ensure that minority farmers, who have higher rates of delinquency and foreclosure, do not lose their farms during a time of national distress, and by focusing targeted relief on those groups that have been disproportionately left out of previous government funding. While this relief may not fully remedy the effects of USDA's past discrimination against minority farmers, it is an important step towards leveling the playing field for minority farmers going forward to help ensure that they do not continue to experience the cyclical effects of prior discrimination in USDA's loan programs.

III. Statement of Qualifications

I have more than 25 years of experience in economic consulting, research, and publishing in the fields of economics, entrepreneurship and finance. I have previously served as an economist with several government agencies: the U.S. Small Business Administration (Office of Economic Research in the Office of Advocacy), the Federal Reserve (Board of Governors), and the U.S. Census Bureau (Center for Economic Studies). I was previously a senior fellow with the Kauffman Foundation for twelve years, where I led a longitudinal study of U.S. startups that were tracked over the 2004-2011 period. I have worked as a consultant on a number of projects for various government agencies, including: the Securities and Exchange Commission, the Minority Business Development Agency, the Small Business Administration, and the Chicago Transit Authority, as well as groups such as the World Bank.

I have a Ph.D. in economics from the University of North Carolina at Chapel Hill. My graduate curriculum included advanced courses in statistics and econometrics. My dissertation examined race, gender, and discrimination among U.S. employer businesses and used confidential microdata from the U.S. Census Bureau. I have worked extensively with large and complex datasets including the Survey of Business Owners (Census), the Characteristics of Business Owners Survey (Census), the Longitudinal Business Database (Census), the Survey of Small Business Finances (Federal Reserve), and the Kauffman Firm Survey (Kauffman Foundation).

Much of my work has focused on entrepreneurship and entrepreneurial finance, and I have studied the particular roles of racial and gender gaps in business financing, racial and gender differences in entrepreneurial outcomes, and disparity studies on government contracting. I have participated in a number of committees and working groups, such the National Advisory Council for Minority Business Enterprise, the OECD Pilot Scoreboard on SME Financing, and the G20 Working Group on SME Financing. My CV is included as Appendix A and lists all of my

publications and work experience. I have not provided expert testimony in court cases before this; however some of my previous consulting engagements have involved disparity studies in the context of federal and state procurement and set asides for minority-owned businesses.

IV. Scope of Work

A. Questions Considered

I was retained by counsel for the Defendant, the Secretary of Agriculture, to conduct research and analyze data regarding various USDA programs, including data regarding the operation of the Farm Loan Programs through the USDA's Farm Service Agency ("FSA") and its predecessor agency, the Farmers Home Administration ("FmHA"). FSA's Farm Loan Programs are designed to provide credit to family farmers who would not otherwise qualify for commercial loans. I was asked to evaluate the evidence of discrimination against minority farmers from the available reports, data, congressional testimony, lawsuits, and anecdotal evidence around these lending programs and opine on whether there are any lingering effects from this past discrimination that disadvantage individual groups of minority farmers.

B. Compensation

I am being compensated for my services at the rate of \$300/hour, which is my standard rate. My rate for depositions is \$400/hour. I have been supported in my work by Jonathan Zandberg, a post-doc researcher who I have worked with in the past. He recently received his Ph.D. in Finance from Boston College and is now an assistant professor at the University of Pennsylvania. His billing rate was \$150/hour. I was also supported in my work by Robert Fairlie, a professor at the University of California at Santa Cruz. His billing rate was \$350/hour.

C. Materials Relied Upon

In conducting my research and analysis, I relied upon a wide variety of data and other information sources. I performed an extensive review of government publications related to FSA's

Farm Loan Programs and other services, including audit reports from the GAO and the USDA OIG. I also reviewed farm characteristics from various years of the Census of Agriculture conducted by the USDA and demographic characteristics of the U.S. population from various years of the Decennial Census conducted by the U.S. Census Bureau. Where necessary, I requested and obtained additional data and reports from officials from the USDA. A true and correct list of all materials relied upon in arriving at my conclusions is attached as Appendix B.

V. Overview of FSA and its Loan Programs and Services

A. FSA Lending Programs

USDA has long directly issued loans and also guaranteed loans issued by commercial lenders.¹ Beginning in 1935, USDA provided financial support in the form of short-term loans and grants to shore up the struggling agricultural sector.² USDA's Farm Loan Programs are administered today by the FSA and, before 1994, by the FmHA. These programs' primary focus over the past several decades is in supporting those shut out of commercial credit markets.³

USDA lending programs account for just a small share of the total lending in the agricultural sector. USDA operates primarily as a lender of last resort, with the vast majority of its

¹ USDA is authorized to guarantee loans for various kinds of third-party lenders, including commercial, non-profit, or cooperative lenders. I use the term "commercial lender" to refer generally to any third-party lender.

² USDA, *A Qualitative Study of Civil Rights Implications in Farm Loan Program Administration: Perceptions and Vulnerabilities* at 9 (1998) ("FLP Qualitative Study"). Direct credit was available even earlier, through the Federal Land Banks. See Charles Dodson & Steven Koenig, *Evaluating the relative cost effectiveness of the Farm Service Agency's farm loan programs*, USDA FSA Report to Congress (August 2006) ("Dodson & Koenig 2006"), at 13, available at <https://perma.cc/HNT2-BNCV>.

³ Dodson & Koenig 2006 at 13; see Consolidated Farm and Rural Development Act, Pub. L. No. 87-128, 75 Stat. 294, 307 (1961) (codified as amended in scattered sections of the U.S. Code).

loans available only to family farms that are unable to obtain credit elsewhere at reasonable rates and terms. As a share of total farm business debt, USDA direct loans increased from under 6% in 1977 to a peak of 17% in 1987, concurrent with broad disruption in credit and agriculture markets, before declining to their current levels.⁴ Guaranteed loans, which have higher borrowing limits, have consistently grown as a proportion of total USDA-subsidized lending since the mid-1980s.⁵ At the end of fiscal year 2019, FSA had a portfolio of \$12 billion in direct loans to 87,000 borrowers and loan guarantees of \$16 billion for 39,000 borrowers.⁶ FSA direct loans were about 3% of the market for farm debt and FSA loan guarantees accounted for about another 5% of the market.⁷

There are two types of loans based on the entity that funds the loan—direct and guaranteed—and also several categories of loans based on the purpose for which the loan is made.⁸ The two primary categories of loans are “farm ownership” loans, made to allow a farmer to purchase or improve farm land or buildings, and “operating” loans, made for continuing operations, including equipment and supply purchases, on an existing farm.⁹ Many borrowers take

⁴ Dodson & Koenig 2006 at 14.

⁵ Dodson & Koenig 2006 at 15 *fig.* III-2; *id.* at 17.

⁶ Cong. Rsch. Serv. (“CRS”), *Agricultural Credit: Institutions and Issues*, R-46768, at 1 (April 21, 2021).

⁷ *Id.*

⁸ In some materials I reviewed, these loan types are broken down further by the specific features of the loan, which I list here for clarity even before describing them: Regular Farm Ownership Loans; Farm Ownership Downpayment Loans; 7-Year Term Operating Loans; Annual (1-year) Operating Loans; Microloan Operating Loans; Youth Operating Loans; Farm Storage Facility Loans; Conservation Loans; and Soil and Water Loans.

⁹ Dodson & Koenig 2006 at 18-19 & *fig.* III.-6; *see generally id.* App. B.

out multiple loans over the course of time. For example, a farmer might take out an ownership loan to purchase land, later take out one or more operating loans to buy equipment or supplies, and then take out an additional ownership loan to expand the farm. Additional loan categories include emergency loans for covering losses incurred during natural disasters, conservation loans, and farm storage facility loans.¹⁰

1. Loan application process

Both direct and guaranteed loans are reserved for farmers who cannot otherwise obtain credit in commercial markets on reasonable terms, and thus serve as “a safety net to family farmers and ranchers who otherwise would be unable to contribute to the farm sector.”¹¹ These two different loan types are processed and administered differently. For guaranteed loans, USDA guarantees up to 95% of a commercial lender’s losses in the event of default, but the loan is issued and serviced by the commercial lender.¹² The commercial lender processes the loan application, and USDA itself has no direct transactional relationship with the borrower but instead works with the commercial lender to process the loan guarantee.

¹⁰ See USCCR, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations*, vol. III (June 12, 2003) (“USCCR 2003”) at 35, <https://perma.cc/MV89-VBMS>. Some loans, which represent a very small share of total USDA loan programs, are available to farmers, without the same eligibility restrictions generally imposed for operating and ownership loans. This includes emergency loans, conservation loans, and farm storage facility loans. See CONACT § 304 (conservation loans); 7 C.F.R. pt. 1436 (farm storage facility loans) Emergency loans have their own distinct limitations. See 7 U.S.C. § 1961. Farm storage facility loans are a program of the Commodity Credit Corporation, not Farm Loan Programs, but the program is also administered by the FSA.

¹¹ USCCR 2003 at 35; see also, e.g., Dodson & Koenig 2006 at 20; USCCR, *The Decline of Black Farming in America*, at 85 (1982) (“1982 Rep.”) at 76, <https://perma.cc/HNT2-BNCV> (“lender of last resort”). Recall too that farm storage facility loans and soil and land/conservation loans are not so limited.

¹² Dodson & Koenig 2006 at 20.

Direct loans are generally available only to those who could not qualify even for a guaranteed loan. Direct loans are issued and serviced by USDA, and USDA bears the entire risk of default.¹³ Unlike with guaranteed loans, for direct loans, the borrower must file the application directly with USDA.¹⁴ USDA first determines whether the applicant is *eligible* for the loan; second, USDA decides whether to *approve* the loan.¹⁵ Both loan eligibility and loan approval decisions are highly decentralized; the key decisions are made at one of hundreds of county-level offices.¹⁶ Although there have been numerous changes in county office structure and in loan processing over the decades of USDA Farm Loan Programs, it has consistently been the case that “decisions regarding direct loans are made primarily by local staff.”¹⁷

Eligibility criteria are set by statute and regulation, which have varied over the years.¹⁸ Generally, to be eligible for either a direct or guaranteed loan, the applicant must (1) be a citizen or qualified noncitizen¹⁹; (2) have “training or farming experience” that is “sufficient to assure reasonable prospects of success”; (3) operate a “family farm”; and (4) be “unable to obtain

¹³ *See id.* at 19.

¹⁴ *Id.* at 19-20.

¹⁵ FLP Qualitative Study at 17.

¹⁶ 1982 Rep. at 71 (identifying, in 1982, “1,800 county offices located in 50 states”); Dodson & Koenig 2006 at 19 (identifying, in 2005, “2,351 county FSA offices” but observing that “less than half” of those offices had a farm credit specialist who could “provide full farm lending and servicing functions”).

¹⁷ Dodson & Koenig 2006 at 19; *see also* 1982 Rep. at 71-72 (“it is at the county level that most individual loans are approved or disapproved”). The most significant change occurred in 1995, when Congress shifted most responsibilities related to administering FSA Farm Loan Programs, including eligibility and approval determinations, from elected county committees to USDA employees in the local USDA county offices.

¹⁸ *See* 7 U.S.C. § 1922(a)(1) (ownership loans); *id.* § 1941(a)(1) (operating loans).

¹⁹ *See, e.g.*, 7 U.S.C. § 1996.

sufficient credit elsewhere.”²⁰ Although these terms have been developed in regulatory language and internal guidance, they still leave substantial discretion to the local county-level official assessing the loan.²¹

Once deemed eligible, the decision whether to approve the loan again requires judgments from the relevant county-level officials.²² An applicant will be approved for a loan only if the “farm operating plan reflects a feasible plan.”²³ Whether a business plan is feasible is determined by the local officials, who assess the proposed plan in light of local conditions and their own experience and judgment; these officials are also available to provide guidance to the applicant and to assist them in improving their plan to obtain the loan.²⁴ In addition, county-level officials are involved in decisions whether the applicant has adequate security for the requested loan.²⁵

2. *Loan servicing options*

When a borrower under an FSA loan program is delinquent or distressed, he or she may, if eligible, receive relief in any of many forms from FSA (or, in the case of a guaranteed loan, from

²⁰ I draw the quoted terms from the current statutory language for farm ownership and farm operating loans. I understand these core terms have been modified slightly over the years without meaningful change. *Compare, e.g.* CONACT § 302 (farm ownership loans). In addition to minor changes in language, Congress also added restrictions related to an applicant’s earlier loan history, including prior USDA loans. *See, e.g.*, 7 U.S.C. § 1925 (total indebtedness cap); *see also* 7 C.F.R. § 764.101 (listing additional eligibility requirements).

²¹ *See, e.g.*, Report of William T. Bielby, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-51 (Feb 20, 2009) (“Bielby 2009”) ¶¶ 14-17; *see also* FLP Qualitative Study at 21-22.

²² Statutory and regulatory deadlines for action, coupled with onerous paperwork requirements, created another obstacle for applicants to overcome. *See* FLP Qualitative Study at 18.

²³ 7 C.F.R. § 764.401(a)(1)(i); *see also id.* § 762.125(a)(2) (requirements for guaranteed loans).

²⁴ *See* Bielby 2009 ¶¶ 18-19.

²⁵ *See* Report of Lynn A. Hayes, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-25 (Feb 20, 2009) (“Hayes 2009”) at 18-24.

the commercial lender working with FSA). This relief is referred to generally as “loan servicing.” Loan servicing options have changed significantly over the years,²⁶ and are now codified in statute or regulation.²⁷ At all times, however, the county-level officials have remained the primary officials responsible for determining eligibility for loan servicing.²⁸

The goal of loan servicing is to preserve the lender’s investment to the maximum extent possible.²⁹ In many cases, this can mean restructuring loan payments to preserve the farm as a going concern; in other cases, where the proposed plan even with restructuring is deemed not feasible, foreclosure is an option.³⁰ The options for loan servicing are many, and the selection can have wide ranging consequences.³¹ For example:

- Rescheduling: for operating loans, lengthening the period of repayment, at the lower of current or original interest rates. Restrictions on this option varied with the specific loan type and changed over the past few decades.
- Re-amortization: for ownership loans, lengthening the period of repayment, at the lower of current or original interest rates. As with rescheduling, restrictions on this option varied with loan type and changed over the past few decades.
- Consolidation: the combination of multiple of related loan types, often used together with another servicing option.
- Limited Resource Program: a special reduced interest rate available to low-income farmers; could be used together with other loan servicing options to obtain an even lower interest rate.

²⁶ See generally FLP Qualitative Study at 10 (describing some changes).

²⁷ See, e.g., 7 C.F.R. §§ 766.105 *et seq.*; *id.* § 762.143 (servicing distressed guaranteed loan accounts); see FLP Qualitative Study at 22 (noting comparatively recent limits on loan servicing discretion). Congress provided certain procedural rights, including requiring FSA to provide notice of all servicing options, in response to litigation in the 1980s.

²⁸ Bielby 2009 ¶¶ 20-21; see FSA Qualitative Study at 18 (explaining that servicing decisions in particular were ripe for subjective judgments)

²⁹ See 7 C.F.R. § 766.105(a) (USDA will “consider loan servicing options and combinations of options to maximize loan repayment and minimize losses”); see also, e.g., 7 U.S.C. § 2001(a).

³⁰ See *id.*; see also Bielby 2009 ¶ 11.

³¹ For a more detailed description of these servicing options, see Hayes 2009.

- Deferral: a delay in making a payment, with the loan's term potentially correspondingly extended. The number of deferrals a borrower could use changed over time.
- Debt Write-Down: reduction in principal and interests amounts. To qualify for this form of debt servicing—in addition to the ordinary requirements to obtain debt servicing—the borrower had to demonstrate a feasible business plan if the servicing options were applied. In addition, this option was only available if the net projected recovery exceeded the proceeds of foreclosure and liquidation.
- Foreclosure and liquidation: the lender forces a sale of the collateral for the creditors' benefit.

To qualify for any form of debt servicing, the borrower had to show an inability to pay beyond the borrower's control and that the borrower acted in good faith to make his payments. In assessing eligibility for servicing options, therefore, county officials were necessarily called to exercise subjective judgment on topics like plan feasibility and the "good faith" of the borrower.³² As has been well-documented, and as discussed more below, this created opportunities for both intentional and unintentional discrimination against minority farmers. A lack of diversity in FSA staff for many decades, and especially on county committees, likely exacerbated these problems.³³ In response to indications that debt servicing options were being arbitrarily offered (or arbitrarily not offered), Congress specifically mandated that USDA provide information concerning available options and eligibility requirements to delinquent borrowers.³⁴

³² See 7 U.S.C. § 2001(b) (setting forth eligibility requirements).

³³ See Civil Rights at the USDA - A Report by the Civil Rights Action Team (CRAT) (1997) (CRAT Rep.) at 18, 20, <https://perma.cc/5DNF-PFJY> (1997 report indicating that, of the 101 county offices covering counties with the greatest concentration of minority farmers, fully one quarter had *no* minority employees, and scarcely a third of county committees in those counties had even one minority member); see also Jackson Lewis, LLC, "Civil Rights Assessment" Final Report (Mar. 31, 2011) ("JL Rep."), at 107, 163, <https://perma.cc/8X6Q-GZ5V>.

³⁴ See 7 U.S.C. § 1981d (enacted 1988).

B. Other Related USDA Programs

In addition to the broader loan programs, USDA and FSA have implemented several related and adjacent programs to assist farmers. The most important programs, for purposes of my analysis, relate to government payments. USDA issues payments to farmers throughout the country through numerous programs. Two recent programs are especially relevant: (1) government payments through the Market Facilitation Program (“MFP”), and (2) government payments through the Coronavirus Food Assistance Program (“CFAP”). Under the MFP, USDA was authorized in 2018 and 2019 to distribute up to \$25.1 billion to farmers who had grown specified crops that were affected by foreign tariffs.³⁵ Through CFAP, USDA provided up to \$16 billion in direct support payments to farmers affected by market disruptions in 2020 from the coronavirus pandemic.³⁶

I outline just a few of the other USDA programs below:

- **Outreach programs:** In 1990, Congress directed (in the “2501 program”) that the Secretary support outreach programs that “encourage and assist” minority farmers through “education and training” and through “equitable participation in all agricultural programs.”³⁷ The 2501 program authorizes grants to community organizations, schools, and other entities to improve participation for minority farmers (and veteran farmers) in USDA programs.³⁸
- **Education programs:** The federal government provides substantial financial support to agriculture-focused schools.³⁹

³⁵ See USDA, Market Facilitation Program, <https://perma.cc/947S-7JCX> (last visited on Oct. 28, 2021).

³⁶ See *USDA Announces [CFAP]*, USDA (Apr. 17, 2020), <https://perma.cc/B7N9-PTRE>.

³⁷ 7 U.S.C. § 2279(b)(2).

³⁸ *Id.* § 2279(c).

³⁹ See, e.g., *id.* § 322.

- **Technical assistance:** In addition to formal training at agriculturally focused schools, USDA operates field training programs—often referred to as “extension” programs⁴⁰—to bring new techniques and advice to working farmers.⁴¹

VI. There Is Substantial Evidence of Historical Discrimination Within USDA’s Loan Programs

Congress’s and the USDA’s recognition of certain farmers as “socially disadvantaged” reflects the acknowledgment that government policies have served to the advantage of white (non-Hispanic, non-Latino) farmers.⁴² The five racial and ethnic groups included in the category of “socially disadvantaged farmers and ranchers” are Black/African American, Asian, Native Hawaiian/Pacific Islander, American Indian/Alaskan Native (at times herein, “AI/AN”), and Hispanic/Latino farmers and ranchers. These groups are not mutually exclusive, as Hispanics can be of any race, including white, and an individual may identify as multiple different races.

I begin my analysis with a review of the numerous reports, audits, lawsuits, and other documents, the list of which may be found in Appendix B,⁴³ that provided evidence of past discrimination in USDA loan programs against each of the minority farmer groups. Where possible in my review, I highlight specific evidence and factors that have affected each socially disadvantaged group separately, although they have all suffered discrimination in USDA lending

⁴⁰ See *id.* § 3103(8) (defining “extension” to mean “the informal education programs conducted in the States in cooperation with the Department of Agriculture”).

⁴¹ See, e.g., *id.* § 341.

⁴² Many materials use the term “socially disadvantaged farmers or ranchers,” which is sometimes abbreviated “SDFR,” and is sometimes abbreviated as “SDA farmer.” Other materials use the abbreviation “SDG” to refer to “socially disadvantaged groups.”

⁴³ Much of this was summarized in the congressional record as part of the deliberation of Section 1005 and the larger ARPA bill.

programs and continue to suffer the negative effects of that discrimination today.⁴⁴ The evidence shows that many of these policies have advantaged white farmers and perpetuated ongoing disparities between white and minority farmers.⁴⁵

This discrimination has manifested itself in many ways, including: disparate treatment in 1) outreach and education about existing loan programs and eligibility; 2) assistance with loan applications; 3) processing time for applications; 4) loan application approvals; and 5) loan servicing. In addition, various reports indicate that minority farmers were given additional requirements, such as needing a joint signature of an FSA representative for withdrawing funds for expenses, which were not imposed on their white counterparts. But the story the evidence tells is clear: For decades, USDA discriminated against minority farmers in numerous ways in administering its loan programs, to the obvious and immediate detriment of those farmers. Although both USDA and Congress were aware of these ongoing problems and made major efforts to address them, it took many successive changes over many years to change the structure and culture of USDA to eliminate discriminatory practices.

These reports also document the follow-on effects of this discrimination. The principal purpose of the Farm Loan Programs is to provide credit to farmers otherwise excluded from private credit markets so that those farmers can invest in, grow, and improve their farms—up to the point where they can then “graduate” from the Farm Loan Programs and obtain credit in private markets. Thus, a major consequence of discrimination in lending programs by FmHA and FSA was that minority farmers who were already struggling to stay afloat were denied the very help they needed

⁴⁴ See CRS, *Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case* at 2 (Feb. 22, 2013), <https://perma.cc/WS9F-CADR> (“Allegations of unlawful discrimination against minority farmers in the management of USDA programs have been long-standing and well-documented at USDA.”).

⁴⁵ See USCCR 2003 (explaining that the FSA’s relationship with farmers goes back to the 1930s).

to stop struggling, while white farmers were given that help. Minority farmers were thus caught in a feedback loop in which their lack of assets or creditworthiness drove them to FSA, which then denied them the relief they needed to increase their assets or improve their creditworthiness. The results of this feedback loop are unmistakable in the data: in 1920, minority farm owners made up 14.7% of all farm owners in the United States. By 1959, that number had dropped to 7.8%. By 1987, it had dropped further to just 2.1%.⁴⁶ It is only since 1997 that there are apparently any meaningful increases in the number and percentage of minority farm owners, although as of 2017, they still made up just 4.3% of all farm owners.

1965 USCCR Report

In 1965, the U.S. Commission on Civil Rights (“USCCR” or “Commission”)⁴⁷ issued a seminal report in which it found discrimination at USDA in program delivery and employment. With respect to the FmHA, it found “a different kind of service to the two races,” Black and white.⁴⁸ Based on “the untenable theory that Negro farmers should be served only by Negro staff,” USDA programs “failed to reach the Negro rural residents most in need of them because of inadequate numbers of Negro staff.”⁴⁹ Thus, white farmers, “[a]ided by Federal loans and technical advice, . . . increasingly diversified their crops and applied modern farming practices,” while Black

⁴⁶ See *infra* Table 6; see also Hr’g on Mgmt. of Civil Rights at the USDA before the House Subcomm. on Gov’t Mgmt., Org., & Procurement, Comm. on Oversight and Gov’t Reform, 110th Cong. (2008), (“2008 Senate Ag. Hr’g”) at 23.

⁴⁷ The U.S. Commission on Civil Rights is a bipartisan agency established by Congress in 1957 to, among other things, investigate and report to Congress and the President on civil rights issues. See USCCR, *Equal Opportunity in Farm Programs, An Appraisal of Services Rendered by Agencies of the USDA* (1965) (“1965 Rep.”) at vii, <https://perma.cc/34HP-5V9P>.

⁴⁸ *Id.* at 100.

⁴⁹ *Id.* at 101.

farmers were increasingly displaced.⁵⁰ Moreover, even when FmHA programs did reach Black farmers, the level of assistance provided to them was consistently inferior; for instance Black farmers would receive smaller loans and thus have fewer opportunities for capital investments.⁵¹ At the same time, the Commission emphasized, USDA was “helping thousands of rural white families to achieve substantial gains in income, housing, and education,” thus increasing the gap between white and Black rural residents.⁵² Indeed, the Commission concluded that “[t]here is unmistakable evidence that racial discrimination has served to accelerate the displacement and impoverishment of the Negro farmer.”

There is also clear statistical evidence of lending discrimination in this report. The Commission requested detailed data on loans to Black and white farmers over the period of July 1963 through May 1964 in 13 counties selected from a list of 71 counties with heavy concentration of Blacks in agriculture. They were able to analyze loans to Black and white farmers from the same economic classes as defined by net worth and their findings provide strong evidence of discrimination against Black farmers.

For instance, Black farmers were more likely to be in the lower net worth classes compared with white farmers, as Table 1 shows.

⁵⁰ *Id.* at 8-9.

⁵¹ *Id.* at 99-100.

⁵² *Id.* at 100.

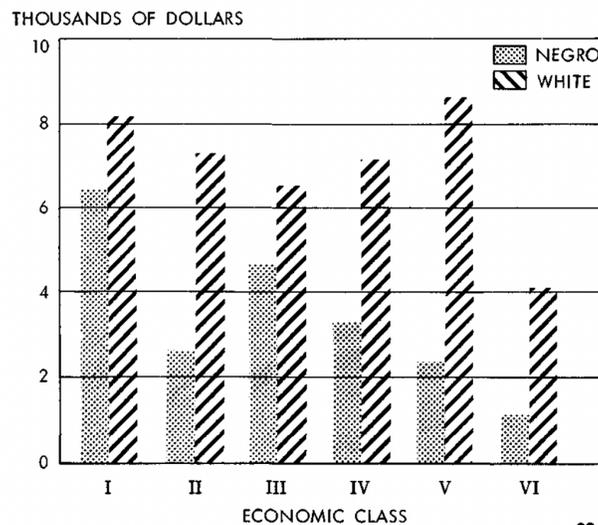
Table 1

Number of borrowers by race and economic class (net worth—figures rounded)

	Negro	White
Class I (over \$20,000)	10	90
Class II (\$15-20,000)	20	80
Class III (\$10-15,000)	50	110
Class IV (\$6-10,000)	130	110
Class V (\$3-6,000)	270	90
Class VI (less than \$3,000)	680	80
Total	1,160	560

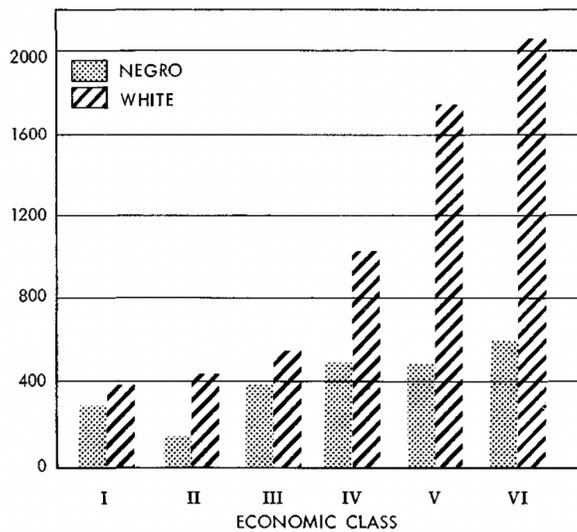
Yet the Commission found that, in each economic class, the average loan size for whites was larger than it was for Blacks. Moreover, the average loan size for poorer white farmers in classes III through V actually *increased* as net worth *decreased*. On the other hand, Black farmers were loaned lower amounts of funding as their level of net worth decreased. In fact, the disparity between whites and Blacks in the average size of loan *increased* as the borrowers got poorer, such that the average size of loans for whites was *four times the size* for Blacks in the poorest net worth categories. (See Figure 1 below.)

FIGURE 1. AVERAGE LOAN SIZE BY RACE AND ECONOMIC CLASS



The next figure shows the number of dollars loaned per \$1,000 of net worth. For white borrowers, the loan-to-net-worth ratio increased from the richest net worth class to the poorest, with the white borrowers in the poorest class receiving loans proportionately five times as large as those in the richest class. For Blacks, there were only slight increases, which meant poor white borrowers received both absolutely and proportionately higher loans than poor Black borrowers.⁵³ So, for example, white farmers in class VI, which had net worth of \$3,000 or less, were able to borrow upwards of \$6,000, while a Black farmer with \$3,000 in net worth was only able to borrow \$1,800. This is strong evidence of discriminatory lending practices toward Black farmers that not only contributed to the decline in Black farms over time—as farmers were unable to obtain the necessary capital to survive—but also hampered their efforts to buy prime land, expand their farms, diversify their crops, cultivate crops with higher returns, or invest in needed machinery to improve productivity.

FIGURE 2. AVERAGE LOAN SIZE PER \$1000 OF NET WORTH BY RACE AND ECONOMIC CLASS
DOLLARS



⁵³ *Id.* at 71.

1982 USCCR Report

A subsequent USCCR report in 1982 also found that USDA's lending practices were actively contributing to the decline in minority farm ownership. The report detailed numerous complaints filed against the FmHA, alleging that Black farmers "[we]re subjected to disrespect, embarrassment, and humiliation by FmHA officials" and a range of discriminatory actions.⁵⁴ One such complaint alleged that FmHA discriminated against Black farmers in their loan applications by:

- Denying them the opportunity to submit loan applications;
- Awarding them loans in lower amounts than requested;
- Failing to give them the full loan amount actually awarded;
- Accelerating loan repayment schedules without explanation;
- Applying loan payments to the wrong accounts, so as to pay off low-interest rather than high-interest loans; and
- Contacting creditors and other businesses to inform them that no loans will be made to these black farmers, thereby preventing them from obtaining other credit, goods, and services needed to continue their farm operations.⁵⁵

The complaint further alleged "a pattern and practice of Black farmers being foreclosed, liquidated, or being forced to sell their property by the county supervisor...."⁵⁶ A subsequent investigation by USDA's Office of Equal Opportunity confirmed that there were various equal opportunity violations of the type alleged above. And these types of complaints were common: at the time, FmHA "le[d] all USDA agencies in civil rights complaints."⁵⁷ Notably, however, the civil rights

⁵⁴ 1982 Rep.

⁵⁵ *Id.*

⁵⁶ *Id.* at 85-86.

⁵⁷ *Id.* at 166.

complaints process was largely “ineffective” and “untimely,” which further contributed to minority farmers’ lost revenues “and ultimately their farms.”⁵⁸

The report further documents that, despite Black farmers being disproportionately in need of assistance, they “received only a very small proportion, 2.5 percent, of the total dollar amount loaned through FmHA’s farm credit programs in 1981.”⁵⁹ In fact, the Commission reported that FmHA was actually manipulating data to prevent minority farmers from obtaining FmHA loans: FmHA had “twice ... changed the data base ... to determine the rate at which minorities [we]re receiving loans,” thereby “narrow[ing] the data base of minority farmers considered eligible for FmHA services.”⁶⁰

Even loans specifically intended for minority and low income farmers were not reaching minority farmers. The FmHA had set aside 25% of farm ownership and operating loan program funds for “limited resource loans,” which were to be provided under special terms and at reduced interest rates to farmers who would have difficulty repaying their loans at regular interest rates.⁶¹ But while it would have been “expected that ... black borrowers would receive limited resource loans at a disproportionately higher rate than white borrowers,” “[t]he majority of blacks receiving farm operating loans did so at regular interest rates.”⁶² “In fact, in six States white borrowers were more likely than blacks to have received these low interest, limited resource loans.”⁶³ The

⁵⁸ *Id.* at 173.

⁵⁹ *Id.* at 133.

⁶⁰ *Id.* at 96.

⁶¹ *Id.* at 125.

⁶² *Id.*

⁶³ *Id.* at 134.

provision of “low interest loans to well-established, predominantly white farmers, further compound[ed] the disadvantageous and noncompetitive position of black and small farmers.”⁶⁴

The Commission emphasized that these disparities were leading to a rapid loss of Black-owned farmland, expressing a sense of urgency over the possibility of the “extinction of black farms in this country” absent “immediate measures” to counter bias and historical discrimination.⁶⁵ There was strong evidence supporting the Commission’s concern over the loss of Black farms. Indeed, the Commission found that between 1970 and 1980, Black-operated farms had declined “57 percent—a rate of loss 2 1/2 times that for white-operated farms”—and “almost 94 percent of the farms operated by blacks ha[d] been lost since 1920.”⁶⁶ Based on the interviews it conducted and the findings and analysis it reviewed, the Commission concluded that the FmHA was “contribut[ing] to the problem rather than to its amelioration.”⁶⁷

Litigation: 1997-2013

A series of lawsuits brought by minority farmers provides further evidence of discrimination in USDA’s Farm Loan Programs that has contributed to land loss over time and disparities in the present day. Beginning in 1997, African American, Native American and Hispanic farmers initiated actions, some of which were certified as class actions, alleging that USDA had systematically discriminated against them on the basis of race and ethnicity in the

⁶⁴ *Id.* at 183.

⁶⁵ *Id.* at 69.

⁶⁶ *Id.* at 176.

⁶⁷ *Id.* at 179.

administration of farm loans and other benefits.⁶⁸ In general, the minority borrowers in each of these actions alleged that (1) USDA willfully discriminated against them on the basis of their race when they sought to apply for farm program loans, loan servicing, and farm program benefits; and (2) when they filed administrative discrimination complaints with USDA to seek redress for that discrimination, USDA failed to adequately respond, instead delaying review, conducting meaningless investigations, or failing to take any investigative action whatsoever to resolve the complaints.⁶⁹ Specific allegations in the various court decisions and pleadings highlight the extent to which discrimination pervaded FmHA's administration of its loan programs.

In *Pigford I* and *Pigford II*, African American farmers recounted:

- Being denied loans even though they complied with the application requirements, rendering them unable to buy supplies, and causing them to lose farmland⁷⁰;
- Receiving conflicting information concerning the status of loan applications, or having to reapply due to FmHA denying that it had received submitted applications, which caused delayed loan approval and receipt of funds when planting season was over and the loan was “virtually useless”⁷¹;
- Having loans placed in “supervised” bank accounts, which required obtaining the signature of a county supervisor before funds could be withdrawn, even though this requirement was not routinely imposed on white farmers⁷²;

⁶⁸ *Pigford v. Glickman* (“*Pigford I*”), Civ. No. 97-1978 (D.D.C.); *Keepseagle v. Glickman*, Civ. No. 99-03119 (D.D.C.); *Garcia v. Glickman*, Civ. No. 00-2445 (D.D.C.); and *In re Black Farmers Discrimination Litigation* (“*Pigford II*”), Misc. No. 08-mc-0511 (D.D.C.), respectively. An action brought by female farmers, which was later consolidated with *Garcia*, made similar allegations, but my review does not cover that lawsuit. See *Love v. Glickman*, Civ. No. 00-2502 (D.D.C.).

⁶⁹ *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), and *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008); *Pigford v. Vilsack*, No. 91-cv-1978, Monitor's Final Report 2, ECF No. 1812.

⁷⁰ See *Pigford*, 185 F.R.D. at 87.

⁷¹ *Id.*

⁷² *Id.*

- Being promised a loan after developing a farm plan with FmHA, and investing in equipment in reliance on that promise, only to have the loan application rejected for no apparent reason.⁷³

In *Keepseagle*, Native American farmers alleged that they routinely:

- Were not advised of the availability of USDA loans and loan servicing options;
- Were not provided loan applications upon request;
- Were not provided adequate technical assistance to enable them to complete the loan and loan servicing application process⁷⁴;
- Experienced “hostility by white County Committee members,” including by committee members using racial slurs and other derogatory comments, when attempting to obtain FmHA assistance.⁷⁵

And in *Garcia*, Hispanic farmers similarly complained of:

- Repeated refusals by FmHA to offer assistance;
- Arbitrary rejection of loan applications, even after working with FmHA to develop a farm plan;
- Delayed resolution or arbitrary denial of loan servicing requests, leading to lost profit or loss of farmland.⁷⁶

Moreover, in all of the lawsuits, farmers told of a “functionally nonexistent” civil rights complaints process for redressing these harms,⁷⁷ in which some farmers’ complaints were simply thrown “in the trash,”⁷⁸ and they recounted how FmHA’s mistreatment had resulted in lost profits and farmland. Indeed, as the court found in the action brought by African American farmers,

⁷³ *Id.*

⁷⁴ *Keepseagle v. Veneman*, No. 1:99-cv-3119, Seventh Am. Compl. ¶ 52, ECF No. 460.

⁷⁵ *Keepseagle* Class Cert. Br. at 18, ECF No. 551-1.

⁷⁶ *Garcia v. Veneman*, No. 00-cv-2445, Third Am. Compl. ¶¶ 4, 18-24, ECF No. 144.

⁷⁷ *Id.* ¶¶ 7, 18-24; *Pigford*, 185 F.R.D. at 88; *Keepseagle v. Veneman*, No. Civ. A. 9903119EGS1712, 2001 WL 34676944, at *1 (D.D.C. Dec. 12, 2001).

⁷⁸ *Pigford v. Glickman*, 182 F.R.D. 341, 343-44 (D.D.C. 1998).

discrimination by FSA “deprived countless farmers of desperately needed credit and payments under various aid programs, with the result that many farmers suffered severe financial losses and even, in many cases, lost title to their land.”⁷⁹

As a result, USDA established a two-track administrative claims process for minority farmers to recover relief for the discrimination alleged in the complaints. The *Pigford I* settlement agreement set the basic framework that the rest of the cases adopted in large part. Under that framework, claimants who supported their discrimination allegations by “substantial evidence”⁸⁰ under “Track A” received a cash award of \$50,000, debt relief for qualifying USDA farm program loans, and tax relief. Claimants who supported their allegations by a “preponderance of the evidence”⁸¹—a higher evidentiary bar—under “Track B” received actual damages and debt relief on qualifying USDA farm program loans. By the end of 2012, when the claims process was closed in *Pigford I* and *Pigford II*, a total of 34,059 African American claimants were awarded roughly \$2.16 billion in combined cash payments, debt relief, and tax payments to the IRS.⁸² As of the close of the *Keepseagle* claims process in August 2013, a total of 3,601 claimants were awarded

⁷⁹ *In re Black Farmers Discrimination Litig.* (“*Pigford IP*”), 856 F. Supp. 2d 1, 8 (D.D.C. 2011), *as amended* (Nov. 10, 2011).

⁸⁰ “Substantial evidence” was defined as “such relevant evidence as appears in the record before the Adjudicator that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence that fairly detracts from that conclusion. Monitor’s Final Report 27.

⁸¹ A “preponderance of the evidence” was defined as “such relevant evidence as is necessary to prove that something is more likely true than not.” *Id.*

⁸² *Id.*

more than \$227.5 million.⁸³ The deadline for filing *Garcia* claims was May 1, 2013, and more than 700 claimants were awarded more than \$45 million.⁸⁴

Although USDA has paid approximately \$2.25 billion to claimants, the settlements and related claims processes did not provide complete relief. It has been reported that State taxes eroded recoveries, and the debt relief provided under the claims processes left some farmers with tax burdens they could not bear.⁸⁵ It is also worth noting that debt relief was an extremely minor portion of each of the claims processes. For instance, in *Pigford I*, fewer than 450 farmers received debt relief out of the 22,721 claimants found eligible to participate in the claims process.⁸⁶ And in *Pigford II*, fewer than 15 farmers received debt relief out of approximately 39,536 claimants found eligible to participate in the claims process.⁸⁷ Likewise, a very small percentage of Native American and Hispanic farmers eligible to participate in their respective claims processes received debt relief.

Additional investigations and reports between 1997 and 2011 documented the ongoing issues of discrimination in the provision of USDA loans and technical assistance during this period. Seminal among them were two reports commissioned by USDA—a 1997 report by the Civil Rights Actions Team (“CRAT”) and a 2011 report by the law firm Jackson Lewis—and a 1997 audit performed by USDA’s OIG.

⁸³ *Keepseagle v. Vilsack*, No. 99-cv-3119, Status Report II.A., ECF No. 646.

⁸⁴ USDA provided an excel sheet with the payments from *Garcia* broken out by Hispanics and women.

⁸⁵ See 167 Cong. Rec. S1264 (Mar. 5, 2021) (Stabenow).

⁸⁶ *Pigford I*, Monitor’s Final Rep. at 1, 61 Table 12.

⁸⁷ *Pigford II*, Status Rep. of Class Counsel Regarding Projected Timeline for Completion of Claims Process at 3, ECF No. 367 (July 8, 2013).

1997 CRAT Report

The CRAT was a group of USDA leaders commissioned by the Secretary of Agriculture in response to the civil rights complaints against the Department to investigate issues related to discrimination at USDA and develop a report with recommended solutions.⁸⁸ The group hosted 12 “listening sessions” in early 1997 in 11 locations across the country to hear from USDA customers, in particular minority farmers interacting with FSA.⁸⁹ At the listening sessions, Black, Hispanic, Asian American, and American Indian farmers all “told stories of years of bias, hostility, greed, ruthlessness, rudeness, and indifference not only by USDA employees, but also by the local county committees that provide access to USDA’s [FSA] programs.”⁹⁰ According to one farmer, if county officials “don’t like you, they won’t give you the loan”⁹¹; as another put it, FSA would treat minority farmers “worse than I would treat a dog.”⁹²

The CRAT reported that, while details varied, the “general outlines” of minority farmers’ stories “remained constant.” Those stories hit on the following types of mistreatment:

- *Delayed approval of loan applications, leading to lost profits:* Minority farmers of limited resources recounted trying “to apply for a farm operating loan through the FSA county office well in advance of planting season,” but having the review process delayed by FSA offices either claiming that no applications were available; providing no assistance in completing the applications; or stretching out application revisions over a period of months. The application would finally be approved after planting season had already passed, which would either leave the farmer unable to plant at all

⁸⁸ CRAT Rep. at 3.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 6.

⁹² *Id.* at 4.

- or limit the farmer's ability to procure "supplies necessary for the best yields," thereby reducing the farmer's profit.⁹³
- *Arbitrary reduction or denial of loans, leading to lost land*: Many farmers also had their FSA loan "arbitrarily reduced" or never come at all—"leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts." Then, "because of the farmer's debt load," additional "operating and disaster loans [might] be denied," which would make it "impossible for the farmer to earn any money from the farm." This would result in the farmer being forced to sell the land or face foreclosure. In other instances, an FSA official might offer a lease and buy-back option but appraise the land at an inflated price, only to auction it off for half that price later—sometimes to friends or relatives of the FSA official.⁹⁴
 - *No recourse through civil rights complaints process*: Farmers also complained of an ineffective process for bringing civil rights complaints based on this inequitable treatment. Some observed that those who brought complaints were foreclosed on more quickly. Others reported that their complaints simply went unanswered. "In Tulsa, OK, an advocate representing black and American Indian farmers said" that they had "filed 72 civil rights complaints" and not one of them had "ever been answered."⁹⁵

The Report also discussed studies requested by Congress and FSA that contained statistics showing lower participation and loan approval rates for minorities in most FSA programs. Although the variances in regional and state statistics showed no consistent picture, some states showed very wide disparities for approval rates and processing times between minorities and non-minorities. In Louisiana, for example, 67% of African American loans were approved, as compared to 83% of non-minority loans; in Alabama, 78% of African American loans were approved, as compared to 90% of non-minority loans.⁹⁶ And in states in the Southeast, data reflected consistently longer applications processing times for minorities; in some states loan

⁹³ *Id.* at 15.

⁹⁴ *Id.* at 16.

⁹⁵ *Id.* at 24.

⁹⁶ CRAT Rep. at 21.

processing took up to three times longer for African American loan applications.⁹⁷ A number of states in the Northwest showed similar disparities in loan processing between non-minorities and American Indians.⁹⁸ The CRAT Report further noted that the Congressional reports providing these statistics suggested that these disparities “may be partially accounted for by the smaller average size of minority- and female-operated farmers, their lower average crop yields, and their greater likelihood not to plant program crops, as well as less sophisticated technology, insufficient collateral, poor cash flow, and poor credit ratings.”⁹⁹ But as representatives of minority groups emphasized, “previous discrimination in USDA programs has helped produce these very conditions now used to explain disparate treatment.”¹⁰⁰

At the end of its investigation, CRAT concluded that USDA had “done more to hurt than to help small and minority farmers.”¹⁰¹ The result was lower participation rates of minority farmers “in most FSA programs”¹⁰² and the loss of significant amounts of land and potential farm income.”¹⁰³

1997 OIG Audit

In 1997, USDA OIG conducted an audit of loan programs and published its findings in a report entitled *Minority Participation in Farm Service Agency’s Farm Loan Programs – Phase II*.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 6.

¹⁰² *Id.* at 21.

¹⁰³ *Id.* at 30.

The audit looked at, among other things, loan servicing decisions made in 11 states and 33 counties in the decade following the enactment of the Agricultural Credit Act of 1987. Through that Act, Congress mandated that FSA “restructure delinquent farm program loans to the maximum extent possible to avoid losses and allow borrowers to continue their operations.”¹⁰⁴ To that end, FSA was to modify “amounts, rates, and terms of delinquent loans, using any combination of primary loan-servicing.”¹⁰⁵

And yet, OIG’s audit showed that FSA’s loan-servicing decisions made from January 1, 1989, through March 3, 1997, disproportionately benefitted non-minority farmers.¹⁰⁶ This was so even though minority borrowers were experiencing higher rates of delinquency. A review of the status of 5,465 borrower accounts as of March 3, 1997, in the 33 loan service centers audited showed that 34% of the non-minority borrowers were delinquent while 46% of the minority borrowers were delinquent.¹⁰⁷

OIG’s audit specifically compared the rates at which minorities and non-minorities received two or more loan-servicing decisions during the applicable time period.¹⁰⁸ Of the 5,465 borrower accounts reviewed, 526 of them had received multiple loan-servicing decisions, including “loan rescheduling, loan consolidation, restructuring, and debt write-down.”¹⁰⁹ OIG

¹⁰⁴ Minority Participation in Farm Service Agency’s Farm Loan Programs, Evaluation Report No. 50801-3-Hq at 29.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 30.

¹⁰⁸ *Id.* at 29-30.

¹⁰⁹ *Id.* at 30.

found that “[n]on-minority borrowers received 449 (85 percent) of the multiple decisions, and minority borrowers received 77 (15 percent) of them.”¹¹⁰ That meant that “nonminorities, who had 34 percent of their accounts in the delinquent or may require attention categories, received 85 percent of the [Agency’s] multiple servicing decisions while minorities, with 46 percent of their accounts in these categories, received only 15 percent of the . . . multiple decisions.”¹¹¹

Additionally, OIG noted a “lack of follow-up with borrowers who did not respond to notices concerning availability of [loan] servicing,” which affected minorities and non-minorities differently. FSA “generally notified” borrowers “of the availability of loan servicing programs” but “did not actively recontact those borrowers who either did not respond or did not actively seek loan-servicing.” OIG also observed that “certain minority borrowers who did not actively seek loan-servicing” from FSA “based their lack of response on negative experiences with FSA during the early stages of the implementation of [FSA’s Primary Loan Service Programs].”¹¹²

Minority borrowers generally suffered more adverse consequences for failing to actively seek loan servicing or respond to FSA notices regarding loan servicing options. For instance, in one state reviewed, FSA “noted that two nonminority borrowers in one county did not respond to notifications of availability of Primary Loan Servicing Programs (PLSP) within the 60-day timeframe required by” FmHA’s internal policies. But staff “did not initiate actions to accelerate these accounts, as required,” and instead “rescheduled the borrowers’ debts when they applied for

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 31.

new loans.”¹¹³ At the time of OIG’s review, “each of the two accounts were on or ahead of schedule, and one of the two borrowers received two additional servicing decisions.”¹¹⁴ Two minority borrowers in the same county were treated differently. Like the two non-minority borrowers, they likewise failed to respond to FSA’s notification regarding loan-servicing options within the 60-day time period required by FSA policies, but in contrast to the non-minority borrowers, FSA accelerated their accounts.¹¹⁵

2011 Jackson Lewis Report

Secretary Vilsack commissioned the firm Jackson Lewis LLP (“JL”) to assess the “effectiveness” of USDA agencies “in reaching America’s diverse population in a non-discriminatory manner.”¹¹⁶ The firm conducted an 18-month investigation and analysis of USDA delivery processes and practices, focused on four USDA agencies, one of which was the FSA.¹¹⁷ At the conclusion of the investigation in 2011, the firm issued a 569-page “Civil Rights Assessment,” where it detailed the “substantiated claims of denial of equal program access and continuing institutional discrimination” within USDA and FSA.¹¹⁸

The firm based its findings and conclusions on the substantial anecdotal and statistical evidence it collected. The anecdotal evidence depicted “a system where the deck was always stacked, not only against access to USDA programs, but also against [customers’] ultimate

¹¹³ *Id.* at 31-32.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 32.

¹¹⁶ JL Rep. at i.

¹¹⁷ *See id.* at 569.

¹¹⁸ *See id.* at iv, viii, 62.

success” due to their status as minorities.¹¹⁹ The focus groups and community-based organizations representing SDGs¹²⁰ and participating in the JL investigation raised many of the same complaints already detailed in prior reports and lawsuits—specifically:

- FSA employees giving minority farmers “the runaround instead of trying to be helpful,” treating them “like dirt,” and blowing them “off like [they] were nothing or nobody,” often to the point that the loan applicants “just gave up”¹²¹;
- FSA giving conflicting information about application requirements—for instance, Hispanics and Latinos complained of “jump[ing] through all the hoops and dott[ing] all the I’s,” receiving assurances that “[e]verything’s good,” only to have the application rejected¹²²;
- FSA delaying the application process by telling applicants that their information “was incomplete” and requiring them to “come back with additional information,” only to tell the applicant later that “there were no funds left”¹²³;
- FSA officials falsely asserting that a minority applicant lied on the application in order to deny the loan¹²⁴;
- FSA delaying disbursement of funds for approved loans “until the planting season was half-way finished,” thereby “prevent[ing] the farmers from taking full advantage of the program’s benefits and contribut[ing] to their losses.”¹²⁵

African American, Hispanics and Latinos, Asians, and Native Americans all complained of specific instances of mistreatment, explaining that:

- “African Americans [we]re denied loans at a higher rate than Whites,” and receive[d] [loans] ... in small amounts ... or subject to dual signature requirements, whereas

¹¹⁹ *Id.* at viii.

¹²⁰ The JL Report included women in its groups of SDGs, along with Hispanics/Latinos; Blacks/African Americans; Asians; American Indians/Alaskan Natives; and Native Hawaiians/Pacific Islanders. *See id.* at 66 n.33. USDA’s interpretation of SDGs, consistent with the statutory definition, includes only racial and ethnic groups, and the JL Report contains many findings specific to the aforementioned racial and ethnic groups.

¹²¹ *Id.* at 83, 112.

¹²² *Id.* at 84.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 81-82.

Whites receive[d] all their funding up front and d[id] not have their funds supervised”¹²⁶;

- Hispanic and Latino farmers were “stereotyped as being farm workers, rather than owners,” and were not provided materials in Spanish¹²⁷;
- Native Americans, African Americans, and Southeast Asian clients stated that they were “not always treated fairly by USDA,” and did “not feel comfortable” when seeking assistance from USDA.¹²⁸

The JL firm found that these substantiated claims of ongoing “unfair treatment and denial of program access” to SDGs “had a broad and longstanding negative impact on the size, profitability, sustainability, business prospects, successes, and failures of SDG farmers and ranchers—including the loss of scarce or irreplaceable farm lands.”¹²⁹

Congressional Hearings

In addition to the reports discussed above, Congress has held numerous hearings concerning discrimination in USDA programs and the ongoing effects of that discrimination. I reviewed many of those hearing transcripts, which provide substantial additional anecdotal evidence of historical discrimination, and also of the lingering effects of that discrimination. I highlight just a few of those anecdotes here.

- An African American farmer testified that county-level officials delayed processing her and her husband’s ownership loan application for five years, causing direct additional expenses.¹³⁰

¹²⁶ *Id.*

¹²⁷ *Id.* at 86.

¹²⁸ *Id.* at 84, 86.

¹²⁹ *Id.* at 64, viii.

¹³⁰ Hr’g on the USDA’s Civil Rights Prog. for Farm Prog. Participants before House Sub-comm., Dep’t Ops., Oversight, Nutrition, and Forestry, Comm. on Ag., 107th Cong. 23, at 81-83 (2002) (2002 Civil Rights Hr’g).

- The same farmer testified that county-level officials delayed processing a later operating loan, preventing her and her husband from obtaining the necessary facilities to care for livestock, resulting in the death of 500 pigs.¹³¹
- Congress heard testimony that USDA took 25% longer to process loan applications from Hispanic farmers and approved them at lower rates.¹³²
- A Hispanic farmer testified that she and her family were unable to obtain relief on their loan payments to USDA after a series of natural disasters because, they were told, they “were bad farmers.” County-level officials then blocked her and her family from selling part of the farm to remain solvent, and then the same officials foreclosed, costing them their entire farm.¹³³
- A Native American farmer testified to the difficulties he faced in obtaining FSA loans because of an inability or refusal to resolve questions about using land as collateral.¹³⁴

Congress heard testimony that illustrated the enduring effects of historic discrimination on farm credit markets and the difficulties that smaller farms have in escaping economic insecurity.

- Witnesses testified that export markets favored “large scale” agriculture businesses, so that export growths were unlikely to substantially benefit minority farmers who generally have much smaller farms.¹³⁵
- Witnesses testified that past discrimination discouraged minority farmers from seeking additional credit, even when they might have received it.¹³⁶
- Witnesses testified that litigation settlements were inadequate and would not “improve [minority farmer’s] chances of remaining on the land.”¹³⁷

¹³¹ *Id.* at 83.

¹³² *Id.* at 33-35, 46.

¹³³ *Id.* at 78, 149-50.

¹³⁴ *See* Hr’g on Management of Civil Rights at the USDA before House Sub-comm., Gov’t Management, Organization, and Procurement, Comm. on Oversight and Gov’t Reform, Serial No. 110-137 at 15-16 (May 14, 2006) (2006 Oversight Hr’g).

¹³⁵ 2015 House Ag. Hr’g at 49-50.

¹³⁶ 2002 Civil Rights Hr’g at 109 (“What has happened in this whole process is that there is an active discouragement of minority people from making an application in the first place. . . . [M]any of [the *Pigford* claimants] are people who attempted and tried to use the programs of the Agency and were turned down along the way.”).

¹³⁷ 2015 House Ag. Hr’g. at 73; *see also id.* at 105-06.

The aforementioned lawsuits, investigations, reports, and other materials contain qualitative evidence, including thousands of complaints by minority farmers of various forms of discrimination in USDA's loan programs, occurring as recently as 2010 when the JL Report was compiled. They also contain quantitative evidence showing statistical disparities in outreach and education about existing loan programs and eligibility; assistance with loan applications; processing time for applications; loan application approvals; and loan servicing.

More recent reporting, discussed below, confirms that many of these disparities persist. These disparities and other lingering effects are consistent with the well-documented and systemic discrimination in the provision of USDA loans and technical assistance to minority farmers and are not solely the product of race-neutral factors untainted by discrimination.

VII. Minority Farmers Continue to Suffer the Effects of Past Discrimination in USDA Loan Programs

A. The Evident Failure of Prior Efforts to Remediate Historic Discrimination in USDA Loan Programs and Its Effects

I am aware of numerous initiatives that Congress has enacted over the last several decades in recognition of USDA's discriminatory behavior towards minority farmers and the resulting detrimental effects. For instance, in Section 617 of the 1987 Agricultural Credit Act, Congress required the USDA to establish annual target participation rates to attempt to ensure that members of socially disadvantaged groups receive direct and guaranteed farm loans. That Act also required FSA to restructure delinquent farm program loans to the maximum extent possible to avoid losses and allow borrowers to continue their operations—including by modifying the amounts, rates, and terms of delinquent loans and using any combination of primary loan-servicing, such as

consolidation, rescheduling, re-amortization, reduction of interest rates, deferrals, and debt write-down.¹³⁸

In the 1990 Farm Bill, Congress established the 2501 program to improve outreach and education to minority farmers and ultimately their participation in USDA programs.¹³⁹ And in Section 741 of the 1999 Agriculture, Rural Development, Food and Drug Administration and related Agencies Appropriations Act, Congress suspended the application of the then two-year statute of limitations regarding Equal Credit Opportunity Claims.¹⁴⁰ This allowed claimants in discrimination suits against USDA, including Black farmers in *Pigford v. Glickman*, Civ. No. 97-1978 (D.D.C.), Native American farmers in *Keepseagle v. Veneman*, No. 1:99-cv-3119 (D.D.C.), and Hispanic farmers in *Garcia v. Vilsack*, No. 1:00-cv-2445 (D.D.C.), to cite instances of discrimination dating back years and even decades in order to qualify for payments under the respective class action settlements and administrative claims processes.

In the 2002 Farm Bill, Congress established the Office of the Assistant Secretary for Civil Rights to attempt to address the well-documented civil rights issues at the USDA, including issues resolving civil rights complaints in a timely manner, and in the 2008 Farm Bill, Congress declared discrimination claims should be quickly resolved.¹⁴¹ In the 2014 Farm Bill, Congress created the

¹³⁸ These provisions were further modified by the Food, Agriculture, Conservation, and Trade Act of 1990, and the Federal Agriculture Improvement and Reform Act of 1996.

¹³⁹ See S. 2830, 101st Cong., enacted at Pub. L. No. 101-624, 104 Stat. 3359 (1990); H.R. Stat. 2854, enacted at Pub. L. No. 104-127, 110 Stat. 888 (1996).

¹⁴⁰ H.R. 1906, 106th Cong., Pub. L. No. 106-78, 113 Stat. 1135 (1999).

¹⁴¹ Farm Security & Rural Investment Act of 2002, H.R. 2646, 107th Congress, enacted at Pub. L. No. 107-171, 116 Stat. 134; Food Conservation & Energy Act of 2008, H.R. 6124, enacted at Pub. L. No. 110-246, 122 Stat. 1651.

Office of Tribal Relations under the Secretary of Agriculture to ensure that relevant programs and policies are efficient, easy to understand, accessible, and developed in consultation with the American Indian and Alaskan Native constituents they impact.¹⁴² And in the 2018 Farm Bill, Congress permanently funded the 2501 program and required GAO to produce two reports concerning: 1) the ability of the Farm Credit System to meet the agricultural credit needs of Indian tribes and their members, and 2) credit service to socially disadvantaged farmers and ranchers. Both reports focused on how to better meet the needs of minority farmers.¹⁴³

These efforts may have addressed some of the underlying problems of USDA discrimination against minority farmers and somewhat improved their situations with respect to certain metrics. It is apparent, however, that these and other efforts, including the payments made to minority farmers through the various claims processes, have not fully remedied the problematic effects of decades of USDA discrimination. This is evidenced by several metrics that continue to show that minority farmers suffer the lingering effects of past discrimination in USDA's loan programs.

B. Existing Disparities Between Minority and Non-Minority Farmers

As discussed more fully below, the lingering effects of past discrimination against minority farmers in USDA loan programs include the current (i) underrepresentation of minority groups in farming in the United States, (ii) smaller size and lower revenues of minority farms, and (iii) lower overall wealth of minority farmers. These disparities, in turn, have had cyclical effects, resulting in minority farmers becoming discouraged borrowers, experiencing higher rates of delinquency on

¹⁴² Agricultural Act of 2014, H.R. 2642, 113th Cong., enacted at Pub. L. No. 113-79, 128 Stat. 649.

¹⁴³ Agricultural Improvement Act of 2018, H.R. 2, 116th Cong., enacted at Pub. L. No. 115-334, 132 Stat. 4490.

their loans and foreclosure on their farms, and having less access to government funds and private lending.

In my analysis below, I used data provided by USDA, as well as published data from the Census of Agriculture and the U.S. Census Bureau. The most recent Census of Agriculture was conducted in 2017. These data provide not only a basic benchmark to show how most minorities are underrepresented in farming, compared with whites, but also how the characteristics of minority farms contrasted with the characteristics of white farms reflect further disparities between the groups.¹⁴⁴

1. Underrepresentation of minority farmers

Because farmers turn to USDA as a “lender of last resort,” discriminatory loan practices can force minorities out of farming altogether. The data show that minority farmers are underrepresented in farming today, meaning that they are a smaller share of the farming population than they are of the general population, the population in rural areas, and in the states where the majority of minority farmers are concentrated.¹⁴⁵

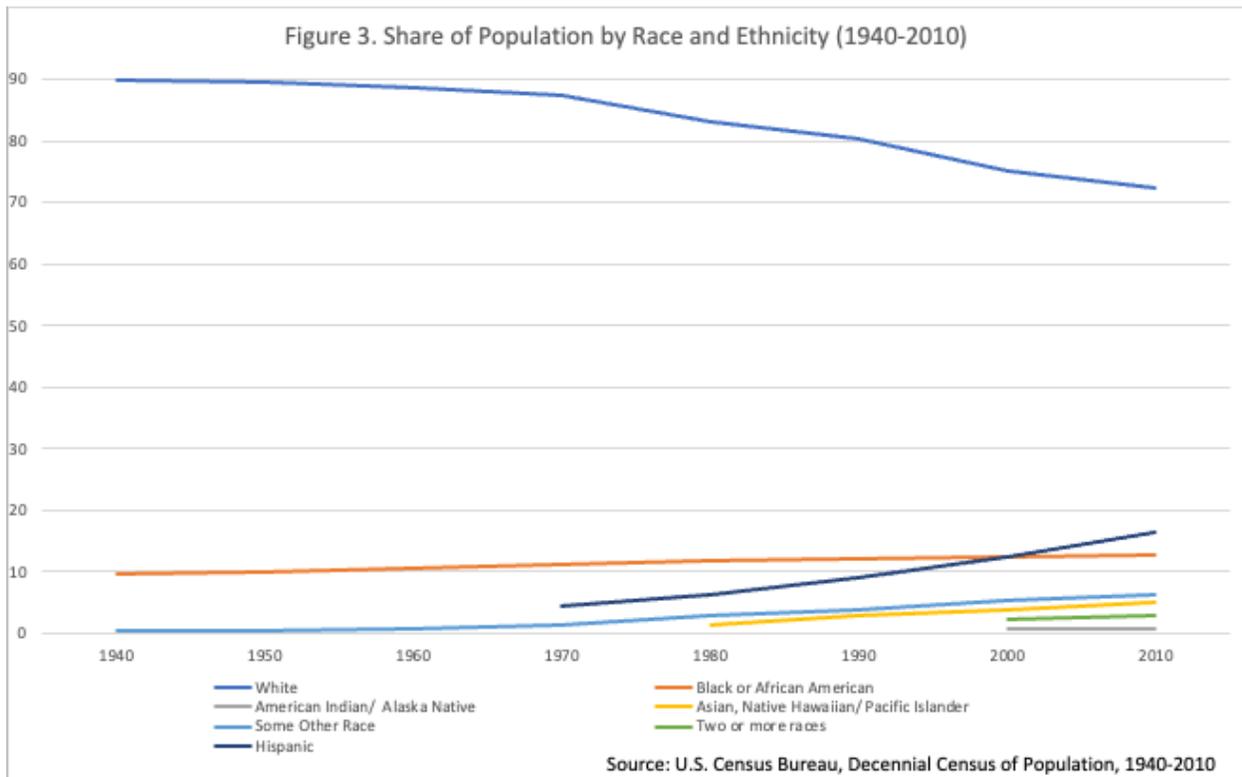
i. Underrepresentation based on comparisons with the national population

While the demographics of the U.S. population have been changing over the last several decades, becoming more diverse as the share of minority groups has increased over time, there has not been a corresponding increase in the share of minority farmers. As shown in Figure 3 below,

¹⁴⁴ I use the term “Black farms” (or Hispanic farms, etc.) interchangeably with “farms with Black producers” (or farms with Hispanic producers, etc.).

¹⁴⁵ For example, Blacks are underrepresented in farming because they constitute more than 12% of the general population, and 8% of the rural population, but they make up only 1.43% of farm producers and 1.6% of farms nationwide have Black principal producers. Additionally, the proportion of Black producers in the five states where they are most heavily concentrated is lower than their corresponding share of that state’s population.

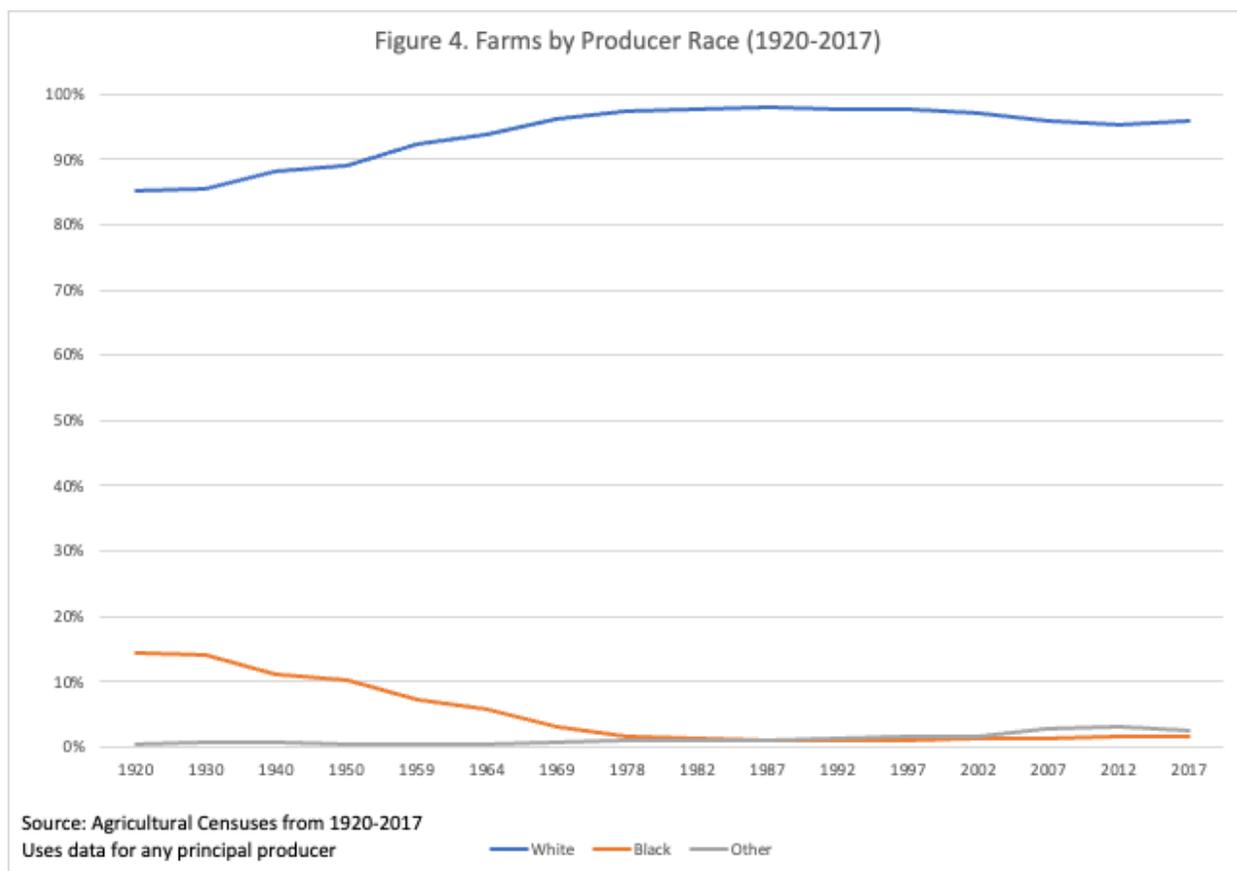
in 1940, the U.S. population was mainly white (90%) and Black (10%), with less than a half of one percent being of some other race. By 2010, whites made up less than three quarters of the population, while minority populations steadily increased, with Blacks making up 12.6%; Asians, Pacific Islanders, and Native Hawaiians making up 5%; and Hispanics making up 16.3%. For more details, see Table 1 in Appendix C.



As Figure 4 below shows, the percentage of white farms in the first half of this century was nearly identical to their share of the overall population—approximately 89% in 1950.¹⁴⁶ But while the percentage of whites in the general population has been declining over the decades, the percentage of white farms has increased from 85.2% in 1920 to a high of 97.1% in 2002, before declining slightly over the last three censuses in 2007, 2012, and 2017, when they made up just

¹⁴⁶ More details can be found in Table 2 in Appendix C.

under 96% of all U.S. farms. Black farms, on the other hand, were 14.3% of farms in 1920, but less than 2% by 2017, dipping to a low of 1% of U.S. farms in the 1992 and 1995 censuses. While Census of Agriculture surveys did not report detailed racial and ethnic data until later years, we can see that minority farmers in the other categories increased their share of U.S. farms from a total 0.4% in 1920 to nearly 3% by 2017, but those increases lagged considerably in proportion to their increases in the overall U.S. population.



A more detailed breakout by race and ethnicity is available beginning in 1978. Table 2 shows that Black farmers' share of farms decreased over the 1978-1997 period before beginning to rise; but by 2017 they still had not reached the level they were at in 1978, which was itself substantially lower than their levels in all of the previous decades. And while the data show that Hispanics' share of farms apparently has increased the most over the 1978-2017 period, their

representation in farming still lags considerably behind their growing share of the U.S. population. In 2017, Hispanics made up about 17% of the population but less than 4% of farms. This is also shown in Figure 5 below. It should be noted, however, that beginning with the 2002 Census of Agriculture USDA began refining its data collection and reporting methodology in ways that may over-represent increases in the number of minority farms. Specifically, statistical adjustments to account for nonresponsive farmers, and more targeted outreach to improve counting of specific groups (especially minorities), led to more accurate counting of minority farmers, which may give the impression that there has been a greater increase in the number of minority farmers than has actually occurred.¹⁴⁷ Moreover, USDA only began producing statistics by farmer ethnicity in 1978.

Table 2. Number of Farms and Percentage of Farms by Race/Ethnicity, 1978-2017

Number of Farms	1978	1982	1987	1992	1997	2002	2007	2012	2017
	Hispanic	17,572	16,183	17,476	20,956	27,717	50,592	55,570	67,000
American Indian	6,889	7,211	7,134	8,346	10,638	15,494	34,706	37,851	39,632
Asian (or Pacific Islander)*	7,942	8,000	7,900	8,096	8,731	8,375	11,214	13,669	13,904
Black	37,351	33,250	22,954	18,816	18,451	29,090	30,599	33,371	32,052
Other*	5,806	5,906	6,652	8,229	9,838				
Native Hawaiian/Pacific Islander*						983	1,356	1,468	2,092
White	2,199,787	2,186,609	2,043,119	1,881,813	1,864,201	2,067,379	2,114,325	2,012,652	1,955,737
More than one race reported*						7,661	12,592	10,292	19,773
Total	2,257,775	2,240,976	2,087,759	1,925,300	1,911,859	2,128,982	2,204,792	2,109,303	2,042,220
Share of Farms									
	1978	1982	1987	1992	1997	2002	2007	2012	2017
Hispanic	0.8%	0.7%	0.8%	1.1%	1.4%	2.4%	2.5%	3.2%	3.8%
American Indian	0.3%	0.3%	0.3%	0.4%	0.6%	0.7%	1.6%	1.8%	1.9%
Asian or Pacific Islander	0.4%	0.4%	0.4%	0.4%	0.5%	0.4%	0.5%	0.6%	0.7%
Black	1.7%	1.5%	1.1%	1.0%	1.0%	1.4%	1.4%	1.6%	1.6%
Other	0.3%	0.3%	0.3%	0.4%	0.5%				
Native Hawaiian/Pacific Islander						0.05%	0.1%	0.1%	0.1%
White	97.4%	97.6%	97.9%	97.7%	97.5%	97.1%	95.9%	95.4%	95.8%
More than one race reported						0.4%	0.6%	0.5%	1.0%

Source: U.S. Census of Agriculture 1978-2017

* Other is defined as follows: In 1978, 1982, 1987, 1992, and 1997 it indicates "All other races", which was a category that was "primarily limited to persons native to or of ancestry from Mexico, the Caribbean, and Central and South America". Beginning in 2002, NHPI were tabulated separately from Asians.

Beginning in 2002 "More than one race reported" was tabulated and reported. Uses data for any principal producer or equivalent metric.

¹⁴⁷ Nathan Rosenberg. 2017. "Farmers Who Don't Farm: The Curious Rise of the Zero-Sales Farmer." *Journal of Agriculture, Food Systems, and Community Development*, October, 1–9, 2017, <https://perma.cc/AD8N-MX9M>.

One can also see that even as the share of minority farms for some groups has risen over time (though, again, this is likely due in part to improved counting of minority groups since 2002), the gap in most minority groups' share of farms as compared to their percentage of the overall population is large—and growing. American Indians and Alaskan Natives are the one exception to this trend. But the apparent diminishing representation gap for this group is likely an artifact of another change in data collection methodology. The 2007 Census of Agriculture marked the first time the National Agricultural Statistics Service (“NASS”) attempted to collect a census report from individual farm operators on American Indian reservations in all states. In all censuses prior to 2007, each reservation was counted as a single farm and tribal government officials and/or Bureau of Indian Affairs officials supplied counts of individual operators.¹⁴⁸

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¹⁴⁸ See USDA, 2007 Census of Agriculture, <https://perma.cc/GD57-RF7R> at 3, Column: Every Voice Counts.

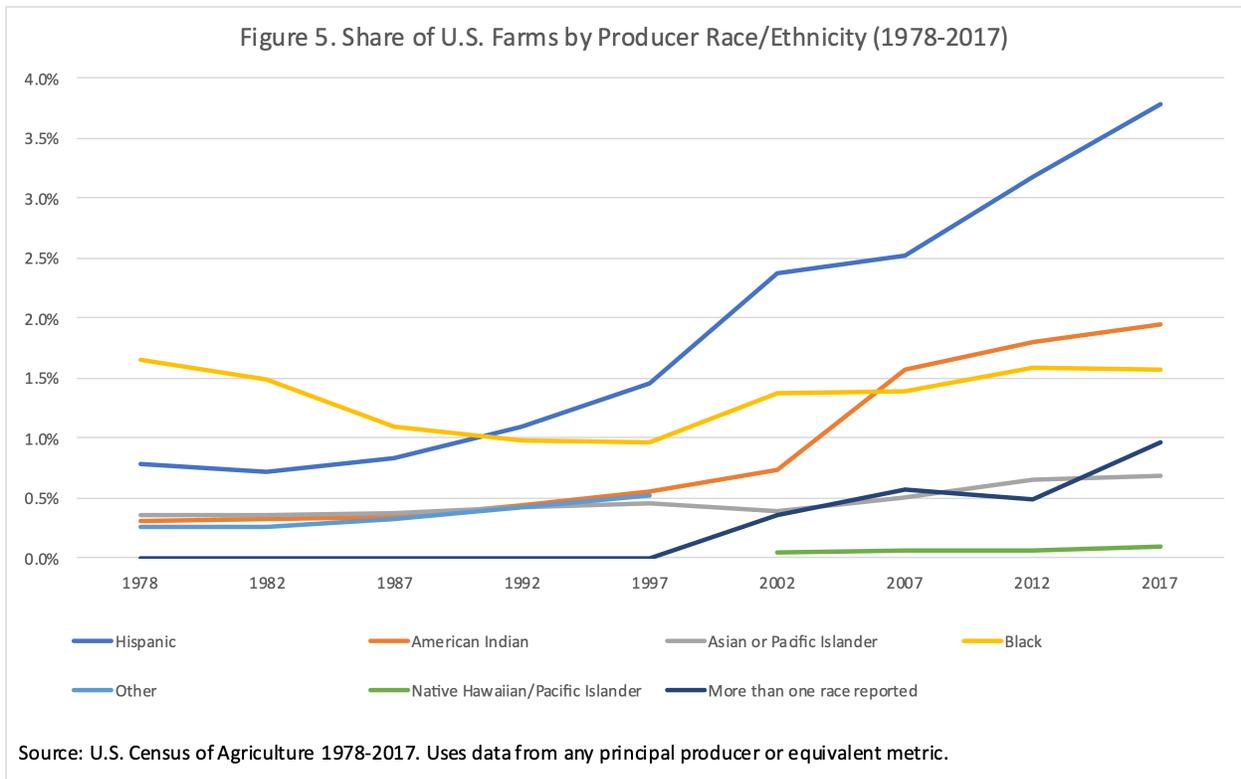


Table 3A, which compares each minority group’s shares of producers¹⁴⁹ to share of the population, shows that all of the minority groups except American Indians and Alaskan Natives are extremely underrepresented as farmers in the United States. There are far fewer farms and farmers from the other minority groups than would be expected given their shares in the general population. For instance, while Asians made up nearly 5% of the U.S. population in 2010, they were only 0.6% of producers in 2017. Hispanics, which made up 16.3% of the population in 2010,

¹⁴⁹ USDA distinguishes between farm “owners,” which reflects a property law status, and “producers,” who actually farm the land. The term “producer” may include the farm owner but also may include a non-owner manager or tenant. *See, e.g.*, 2017 Agriculture Census, Appendix B at 19, <https://perma.cc/J3ZW-TPAG> (defining “producer” as “a person who is involved in making decisions for the farm operation. Decisions may include decisions about such things as planting, harvesting, livestock management, and marketing”). Farms can have multiple producers. Beginning in 2017, data were collected for a maximum of four producers per farm. USDA previously used the term “primary operator,” which was limited to one per farm.

represented just 3.3% of the producers in 2017. Blacks, who made up 12.2% of the population in 2010, were just 1.3% of the producers in 2017.

	Number	Share of Producers	Share of Population
American Indian/Alaska Native	58,199	1.7%	0.7%
Black or African American	45,508	1.3%	12.2%
Asian	22,016	0.6%	4.7%
Pacific Islander/Native Hawaiian	3,018	0.1%	0.2%
Hispanic	112,451	3.3%	16.3%
White	3,244,344	95.4%	72.4%
Non-minority (White Non-Hispanic) **	3,063,170	90.1%	63.7%
Some other race (alone)			0.2%
Two or More Races	26,749	0.8%	1.9%
Total	3,399,834		100%

Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-hispanics in the race categories.

** Note: Provided by a special tabulation from USDA.

Source: 2017 U.S. Census of Agriculture. Uses data for any producer.

ii. *Underrepresentation based on comparisons with the rural population*

Because minorities tend to account for a smaller proportion of rural populations, where the majority of farms—and especially large farms—are located, making comparisons only to nationwide population may not provide a complete picture. Figure 6¹⁵⁰ below shows that minorities tend to be more concentrated in urban areas. The concentration of minority populations in urban areas where farming is less prevalent might arguably skew the nationwide data such that it exaggerates underrepresentation. However, the fact that minority populations are less rural may itself be in part a consequence of unequal access to agricultural wealth caused by discrimination

¹⁵⁰ The chart below appears in the November 2018 ERS report, *Rural America at a Glance, 2018 Edition*, <https://perma.cc/C24E-QTQ8>.

in the farm loan sector, which discrimination may have driven minorities from farming in rural areas to more urban areas where the economy is less agriculturally driven.¹⁵¹ Still, focusing only on rural population metrics is one way to control for any effects of uneven population distribution. One would expect that, absent the effects of discrimination pushing minorities out of the farming economy, the share of minority producers in rural areas would be on par with their share of the population in those areas. In fact, just as when considering the general nationwide population data, the rural population data show that minority farmers are also underrepresented in rural population areas nationwide.¹⁵²

As shown in Table 3B and Figure 6 below, in 2017, non-Hispanic whites were estimated to account for nearly 80% of the rural population but 90% of producers. On the other hand, Hispanics made up 9% of the rural population but only 3.3% of producers, and Blacks made up 8% of the rural population but only 1.3% of producers. American Indians made up 2% of the rural

¹⁵¹ This concept is sometime referred to as “survivorship bias,” where the characteristics of a given sample are skewed by the absence of data from those who drop out of the sample before the measurement is taken. *See, e.g.*, Paul Nightingale, & Alex Coad, Muppets and gazelles: political and methodological biases in entrepreneurship research, *Industrial & Corporate Change*, 23(1), 113-143 (2014), <https://perma.cc/C6AY-57G8>; Gavin Cassar, “The financing of business start-ups”, *Journal of Business Venturing* 19.2 (2004): 261-283, <https://perma.cc/FP3E-XCWK>.

¹⁵² Rural is defined here as nonmetropolitan (nonmetro) areas by the Office of Management and Budget (OMB) on the basis of counties or county-equivalent units (e.g., parishes, boroughs). Nonmetro counties are those outside the boundaries of metropolitan (metro) areas. In 2013, OMB defined metro areas as broad labor-market areas that include: 1) central counties with one or more urbanized areas; urbanized areas (described in the next section) are densely-settled urban entities with 50,000 or more people and 2) outlying counties that are economically tied to the core counties as measured by labor-force commuting. Outlying counties are included if 25 percent of workers living in the county commute to the central counties, or if 25 percent of the employment in the county consists of workers coming out from the central counties. (*See* ERS, What is Rural, <https://perma.cc/V3FT-NMM9> for more details).

population and under 2% of producers.¹⁵³ Finally, Asians and Pacific Islanders (included in the “Other” category) accounted for 1.1% of the rural population but only 0.7% of producers.¹⁵⁴

	Share of Producers	Share of Rural Population
American Indian/Alaska Native	1.7%	2.0%
Black or African American	1.3%	8.0%
Asian/Pacific Islander/Native Hawaiian	0.7%	1.1%
Hispanic	3.3%	9.0%
White	95.4%	
Non-minority (White Non-Hispanic) **	90.1%	79.9%
Two or More Races	0.8%	0.5

Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-Hispanics in the race categories.

** Note: Provided by a special tabulation from USDA.

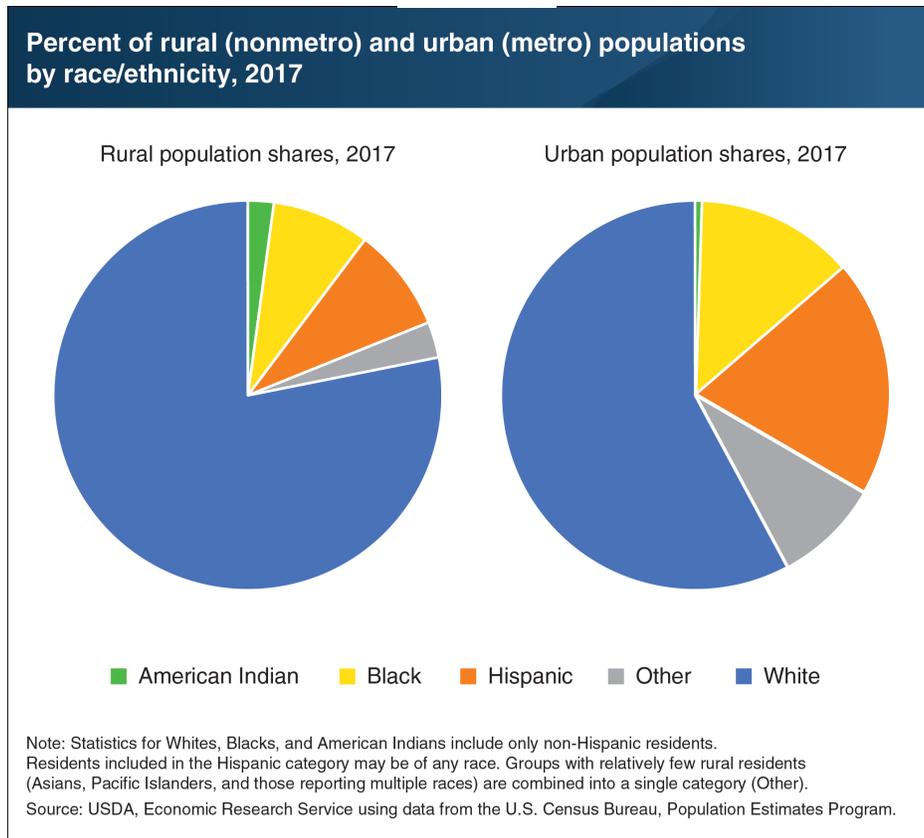
Source: 2017 U.S. Census of Agriculture and USDA, ERS using data from US Census Bureau, Population Estimates Program. Uses data for any producer.

[Continued on next page]

¹⁵³ American Indians were the only minority group more concentrated in rural areas (2% of the population) than urban (only 0.5% of the population).

¹⁵⁴ But relatively few Asians and Pacific Islanders were rural residents.

Figure 6



iii. Underrepresentation based on comparisons with state-level population data

Another way to measure minority representation in farming is by using state-level data to compare the minority population and producer shares in the states where minority farmers are most heavily concentrated. One would expect that, absent discrimination and its lingering effects, minority farmers would be better represented in the states where they are principally located. In fact, the state-level data show the same pattern as the national-level data. Table 3C below compares each minority group’s share of farms with their share of the population in the top five states where

each minority group's producers nationwide are primarily located.¹⁵⁵ As the data illustrate, each minority group's share of farms in these five states is much smaller than its share of the state population.

For example, while Hispanics made up 37.6% of the population of Texas, only 11.3% of the farms in Texas had a Hispanic principal producer. Similarly, in California, where Hispanics also made up 37.6% of the population, only 13.5% of farms had a Hispanic principal producer. And Hispanics made up more than 46% of the population of New Mexico but less than a third of New Mexican farms had a Hispanic principal producer.

The data show similar patterns across almost every minority group. American Indian/Alaskan Native farmers provide one exception to this pattern. In four of the five states where the majority of AI/AN farmers are located, they are actually overrepresented when compared to their share of each state's population.¹⁵⁶ However, other data show that AI/AN farmers are still at a disadvantage as compared to non-minority farmers in several other respects. For instance, as will be discussed below, AI/AN farms in the majority of these same states are substantially smaller in size than white farms (*See* Table 7), and the market value of production of AI/AN farms nationwide is, on average, only one-quarter that of white farms (*See* Table 4).

Additionally, while the share of Native Hawaiian/Pacific Islander farmers is relatively on par with their share of the state populations, other data discussed below show that Native Hawaiian/Pacific Islander farms are significantly smaller than white farms in terms of acreage in

¹⁵⁵ For example, for Black farmers, I looked at Texas, Mississippi, Alabama, Louisiana, and Georgia. Texas has more Black farmers than any other state; Mississippi has the second-greatest number of Black farmers, and so on. See Table 3 in Appendix C for a breakout of farms and acreage by race and ethnicity for each state and Table 4 in Appendix C for the top five states for each race and ethnic group and the shares of farmers that are located in each.

¹⁵⁶ However, this drops to three states when using rural populations as a benchmark (*See* Table 3D).

the same states. In Hawaii, white farms are more than twice as large as Native Hawaiian/Pacific Islander farms; in Florida, they are nearly seven times larger. (*See* Table 7.)

For each state, I also looked at the proportion of the population that was white, and the proportion of farms that had white principal producers. The data for every state show white farmers dominating the farming industry—in Mississippi, for instance, whites make up less than 60% of the population but account for over 85% of the farms. In Hawaii, whites make up 25% of the population but account for 54% of the farms.

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	Share of Farms that have a Hispanic, Latino, or Spanish Principal Producer	Share of Population that is Hispanic, Latino, or Spanish	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	3.8%	17.3%	95.8%	72.4%
States				
Texas	11.3%	37.6%	95.5%	70.4%
California	13.5%	37.6%	92.5%	57.6%
New Mexico	32.8%	46.3%	76.0%	68.4%
Florida	10.2%	22.5%	94.1%	75.0%
Colorado	7.1%	20.7%	98.3%	81.3%
	Share of Farms that have an American Indian or Alaskan Native Principal Producer	Share of Population that is American Indian or Alaskan Native	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	1.9%	0.9%	95.8%	72.4%
States				
Arizona	60.6%	4.6%	38.8%	73.0%
Oklahoma	11.0%	8.6%	88.1%	72.2%
New Mexico	23.6%	9.4%	76.0%	68.4%
Texas	0.9%	0.7%	95.5%	70.4%
Montana	4.8%	6.3%	95.1%	89.4%
	Share of Farms that have an Asian Principal Producer	Share of Population that is Asian	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	0.7%	4.7%	95.8%	72.4%
States				
California	5.8%	13.0%	92.5%	57.6%
Hawaii	31.5%	38.6%	54.2%	24.7%
Texas	0.4%	3.8%	95.5%	70.4%
Florida	1.8%	2.4%	94.1%	75.0%
Washington	1.4%	7.2%	97.1%	77.3%
	Share of Farms that have a Black or African American Principal Producer	Share of Population that is Black or African American	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	1.6%	12.6%	95.8%	72.4%
States				
Texas	3.2%	11.8%	95.5%	70.4%
Mississippi	14.0%	37.0%	85.4%	59.1%
Alabama	7.2%	26.2%	91.0%	68.5%
Louisiana	8.0%	32.0%	90.9%	62.6%
Georgia	4.5%	30.5%	94.3%	59.7%
	Share of Farms that have a Native Hawaiian or Other Pacific Islander Principal Producer	Share of Population that is Native Hawaiian or Other Pacific Islander	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	0.1%	0.2%	95.8%	72.4%
States				
Hawaii	10.5%	10.0%	54.2%	24.7%
California	0.4%	0.4%	92.5%	57.6%
Texas	0.1%	0.1%	95.5%	70.4%
Florida	0.2%	0.1%	94.1%	75.0%
Oregon	0.2%	0.3%	97.8%	83.6%

Source: 2017 U.S. Census of Agriculture and 2010 Decennial Census.

If we again compare the share of farms that have producers of a given demographic with their corresponding shares of the rural population for the states with the vast majority of the

minority farms, we again see similar patterns of underrepresentation.¹⁵⁷ (Recall also that this analysis may overstate minority participation in agriculture because of survivorship bias—those who cannot overcome discrimination to succeed in farming may move away from rural areas to places where there are more available opportunities.) For example, as shown in Table 3D, Hispanics made up 31.6% of the rural population in Texas, but only 11.3% of the farms in Texas had a Hispanic principal producer. Blacks made up 7.8% and 38.7% of the rural populations in Texas and Mississippi respectively, but only 3.2% and 14% of the farms in those same states had a Black principal producer. Whites, on the other hand, made up 58.6% of the rural population in Texas, but 95.5% of the farms in Texas had a white principal producer. American Indians and Alaskan Natives and Asians are the only two groups whose proportion of statewide producers sometimes exceeded their proportion of the rural population.

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¹⁵⁷ The data for urban and rural populations by state come from the data download from the Atlas of Rural and Small-Town America, which do not break out Native Hawaiians and Other Pacific Islanders out separately. USDA-ERS, Atlas of Rural and Small-Town America, <https://perma.cc/8S8S-ABFY>.

Top Three States	Share of Farms that have a Hispanic, Latino, or Spanish Principal Producer	Share of Rural Population that is Hispanic, Latino, or Spanish	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Texas	11.3%	31.6%	95.5%	58.6%
California	13.5%	15.7%	92.5%	75.2%
New Mexico	32.8%	44.1%	76.0%	40.4%
Florida	10.2%	13.7%	94.1%	68.9%
Colorado	7.1%	21.0%	98.3%	74.5%
	Share of Farms that have an American Indian or Alaskan Native Principal Producer	Share of Rural Population that is American Indian or Alaskan Native	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Arizona	60.6%	32.4%	38.8%	40.7%
Oklahoma	11.0%	12.3%	88.1%	71.2%
New Mexico	23.6%	11.6%	76.0%	40.4%
Texas	0.9%	0.4%	95.5%	58.6%
Montana	4.8%	7.6%	95.1%	87.1%
	Share of Farms that have an Asian Principal Producer	Share of Rural Population that is Asian	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
California	5.8%	1.4%	92.5%	75.2%
Hawaii	31.5%	23.7%	54.2%	31.1%
Texas	0.4%	0.6%	95.5%	58.6%
Florida	1.8%	0.6%	94.1%	68.9%
Washington	1.4%	1.9%	97.1%	78.8%
	Share of Farms that have a Black or African American Principal Producer	Share of Rural Population that is Black or African American	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Texas	3.2%	7.8%	95.5%	58.6%
Mississippi	14.0%	38.7%	85.4%	57.1%
Alabama	7.2%	24.1%	91.0%	69.2%
Louisiana	8.0%	31.7%	90.9%	63.0%
Georgia	4.5%	25.6%	94.3%	66.3%

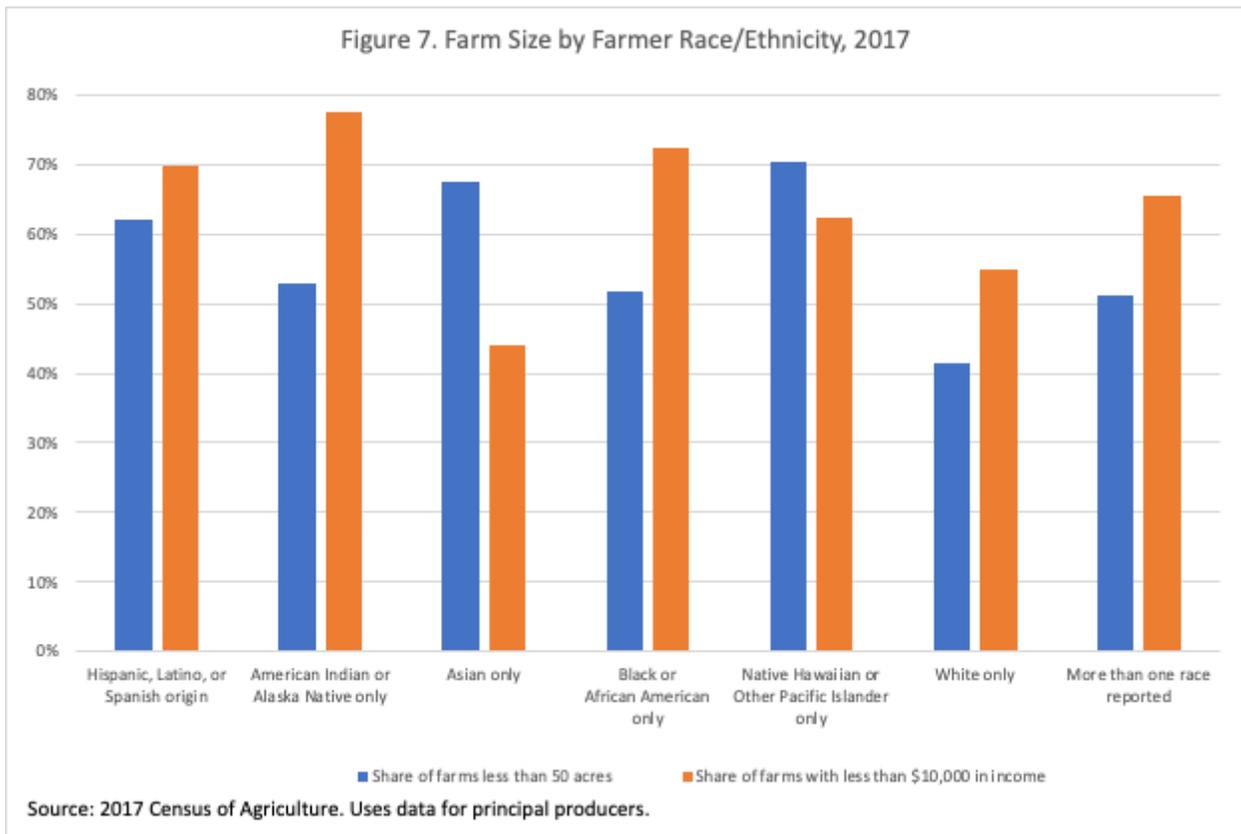
Source: 2017 U.S. Census of Agriculture, 2010 Decennial Census, Atlas of Small Town and Rural America (<https://www.ers.usda.gov/data-products/atlas-of-rural-and-small-town-america/>).

In sum, the current reality of farming in the United States is that it is predominantly and disproportionately the occupation of whites. The data consistently show that minorities are underrepresented in farming. At both the national and state levels, minorities generally account for a smaller—and, in many cases, much smaller—share of farmers than they do of the population. And this is generally true when making comparisons based on both the general and rural populations.

2. *Smaller farms and lower revenues of minority farms*

In addition to most minority groups currently being underrepresented in farming, most minority farms are also smaller on average, in terms of both acreage and revenue, when compared with white farms. This is a natural consequence of past discrimination in lending practices, which

hindered minority farmers seeking to expand or invest in their farms. Figure 7 below shows farm size by race and ethnicity. The data indicate that minority farmers tend to have a larger share of the farms that are less than 50 acres and with income less than \$10,000. Indeed, the majority of all minority farms are less than 50 acres; but only approximately 40% of white farms are less than 50 acres.



The next set of tables provides more detail. Table 4 specifies various farm characteristics, including acreage, value of production, industry sector, and revenues, as of 2017, by the race or ethnicity of the principal producers.¹⁵⁸ Table 5 shows the same characteristics by race or ethnicity of the principal producers in percentage breakdowns,¹⁵⁹ while Table 6 shows how farms with certain characteristics are distributed within racial or ethnic categories as of 2017.

[Continued on next page]

¹⁵⁸ A principal producer may be any race and also of Hispanic/Latino origin; therefore, each of the racial groups listed in Table 4, and all the other tables below, includes farmers who belong to that racial group and also are of Hispanic or Latino origin. In addition, the tables separately include a column specific to Hispanic/Latino origin for purposes of highlighting the data pertaining to those farmers in particular. To prevent double-counting of Hispanics—once in the Hispanic/Latino column and again in the columns pertaining to each racial group—the totals listed in the far right column in each table do not include the data separately listed in the “Hispanic, Latino, or Spanish origin” column.

¹⁵⁹ Some of the totals listed in Table 5 may be greater than 100% because each farm has up to four principal producers. If a farm has multiple principal producers who do not all belong to the same racial group, that farm is counted once in each column corresponding to the racial groups to which the producers belong. For example, if a farm has two principal producers, one white and one Black, the farm is counted twice—once in the column for “white only” and once in the column for “Black or African American only”; but if a farm has two or more white producers, the farm is counted only once in the “white only” column. If a principal producer identifies with more than one race, the farm is counted in the last column entitled, “More than one race reported.”

Table 4. Selected Farm Characteristics by Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -							Total
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	
FARMS AND LAND IN FARMS								
Farmsnumber	77,416	39,632	13,904	32,052	2,092	1,955,737	19,773	2,042,220
Land in farmsacres	26,041,600	51,095,994	1,831,229	3,862,936	426,068	843,497,615	6,712,435	900,217,576
FARMS BY SIZE								
1 to 9 acres	20,312	11,716	4,693	4,971	810	251,601	3,783	273,325
10 to 49 acres	27,828	9,300	4,718	11,613	661	557,536	6,327	583,001
50 to 179 acres	15,104	7,523	2,951	10,909	336	543,042	5,218	564,763
180 to 499 acres	7,259	4,345	926	3,421	163	305,998	2,582	315,017
500 acres or more	6,913	5,748	616	1,138	122	297,560	1,863	306,114
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS (in \$1000s)								
Total (\$)	\$ 14,600,970	\$ 2,137,232	\$ 6,659,080	\$ 987,475	\$ 414,300	\$ 388,248,112	\$ 1,696,604	\$ 397,466,269
Market value of agricultural products sold (\$)	\$ 14,471,891	\$ 2,082,765	\$ 6,642,403	\$ 937,852	\$ 411,777	\$ 379,433,107	\$ 1,651,761	\$ 388,522,695
Crops, including nursery and greenhouse crops	\$ 9,237,329	\$ 751,356	\$ 3,628,008	\$ 516,021	\$ 217,192	\$ 189,187,769	\$ 913,865	\$ 193,546,699
Livestock, poultry, and their products	\$ 5,234,562	\$ 1,331,409	\$ 3,014,395	\$ 421,831	\$ 194,585	\$ 190,245,338	\$ 737,896	\$ 194,975,996
Government payments (\$)	\$ 129,078	\$ 54,467	\$ 16,677	\$ 49,623	\$ 2,523	\$ 8,815,005	\$ 44,843	\$ 8,943,574
FARMS BY ECONOMIC CLASS								
Less than \$2,500	36,885	22,941	3,627	14,102	802	647,756	8,154	688,834
\$2,500 to \$4,999	8,718	3,802	1,079	4,331	225	201,905	2,284	211,272
\$5,000 to \$9,999	8,571	4,007	1,431	4,770	280	223,989	2,508	234,209
\$10,000 to \$24,999	7,721	3,698	1,775	4,700	275	242,335	2,727	252,619
\$25,000 to \$49,999	4,184	1,873	1,134	1,953	187	149,973	1,405	155,061
\$50,000 or more	11,337	3,311	4,858	2,196	323	489,779	2,695	500,225
PER FARM AVERAGE								
Market value of agricultural products sold (\$)	\$ 186,937	\$ 52,553	\$ 477,733	\$ 29,260	\$ 196,834	\$ 194,010	\$ 83,536	\$ 190,245
Government payments (\$)	\$ 1,667	\$ 1,374	\$ 1,199	\$ 1,548	\$ 1,206	\$ 4,507	\$ 2,268	\$ 4,379
Acres	336	1289	132	121	204	431	339	441
PER ACRE AVERAGE (\$)	\$ 556	\$ 41	\$ 3,627	\$ 243	\$ 966	\$ 450	\$ 246	\$ 432
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)								
Oilseed and grain farming (1111)	2,907	1,001	307	2,272	58	321,035	1,051	325,724
Vegetable and melon farming (1112)	2,475	1,354	1,913	2,123	180	39,669	718	45,957
Fruit and tree nut farming (1113)	10,251	1,088	4,708	875	404	88,960	1,553	97,588
Greenhouse, nursery, and floriculture production (1114)	2,664	336	1,460	392	178	43,277	617	46,260
Other crop farming (1119)	11,914	4,454	1,279	5,661	277	444,099	3,446	459,216
Tobacco farming (11191)	31	6	6	78	0	3,673	4	3,767
Cotton farming (11192)	286	43	13	126	5	8,631	36	8,854
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	11,597	4,405	1,260	5,457	272	431,795	3,406	446,595
Beef cattle ranching and farming (112111)	28,298	16,598	1,642	15,989	528	607,334	7,203	649,294
Cattle feedlots (112112)	141	54	8	13	3	13,296	41	13,415
Dairy cattle and milk production (11212)	598	101	24	64	12	37,517	133	37,851
Hog and pig farming (1122)	622	293	70	398	27	22,263	254	23,305
Poultry and egg production (1123)	1,714	609	1,279	402	45	42,030	572	44,937
Sheep and goat farming (1124)	6,877	7,856	529	1,224	160	83,343	1,290	94,402
Aquaculture and other animal production (1125, 1129)	8,955	5,888	685	2,639	220	212,914	2,895	225,241

Source: 2017 Census of Agriculture

With respect to **acreage**, Table 5 shows that most minority groups had a much smaller share of farm acreage than they had of farms nationwide in 2017.

- Whites had 95.8% of the farms and 93.7% of the acreage;
- Hispanics had 3.8% of farms but only 2.9% of the acreage;
- Asians had 0.7% of the farms but only 0.2% of the acreage;
- Blacks had 1.6% of the farms but only 0.4% of the acreage; and

- Native Hawaiians and Pacific Islanders had 0.1% of the farms but only 0.05% of the acreage.

American Indians and Alaskan Natives were the exception, insofar as they had 1.9% of the farms and 5.7% of the acreage, but those numbers are misleading. Farms with AI/AN principal producers make up a disproportionate share (4.3%) of the smallest farms (those under 10 acres), but they also make up 1.9% of the large farms (those with 500 acres or more). All of the other minority groups have a much smaller share of the large farms (500 acres or more) compared with their share of farms overall. There are several explanations for the larger relative share of farms of 500 acres or more with AI/AN principal producers. First, data discussed further below indicate that some large farms concentrated in a small number of states are artificially driving up the average overall acreage for AI/AN farms nationwide. That table shows that in most of the states where the majority of AI/AN farmers are located, their farms are actually substantially smaller than the average size of white farms in that state. In Texas, for example, the average white farm is almost twice as large as the average AI/AN farm. Other data showed that even on reservations, AI/AN farms were smaller than farms with non-AI/AN farms on the same reservations.¹⁶⁰ In addition, American Indian farms are fairly concentrated in cattle ranching,¹⁶¹ and thus a much larger percentage of the acreage of American Indian and Alaskan Native farms, as compared to farms held by other racial or ethnic groups, is dedicated to pasture (78% in 2017). Whites, for

¹⁶⁰ See *infra* Table 10.

¹⁶¹ The vast majority of the acreage of American Indian farms is located on reservations (*see* Tables 4 and 8), which tend to be more rural and focused on agriculture. Terry L. Anderson & Dean Lueck, *Land Tenure and Agricultural Productivity on Indian Reservations*, *The Journal of L. & Econ.*, 35(d), 427-454 (1992), <https://perma.cc/777V-EBBN>; USDA-NASS Montana Field Off., *U.S. American Indian Agriculture at a Glance*, <https://perma.cc/HHB3-UFJ5>, at 1.

example, had only 43% of their acreage in pastureland.¹⁶² Notably, as discussed below, cattle ranching generally brings in less income than other types of agricultural production. Accordingly, despite their acreage, AI/AN farms are less profitable. And in fact, even on reservations, where the majority of farm acreage belongs to American Indian farmers, white farms account for a highly disproportionate share of agricultural products sold. (*See* Tables 4 and 10.)

[Continued on next page]

¹⁶² USDA-NASS, 2017 Race/Ethnicity/Gender Profile from the 2017 Census of Agriculture (NASS), <https://perma.cc/FPW3-VUMV>.

Table 5. Share of Farms by Selected Farm Characteristics and Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -							Total
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	
FARMS AND LAND IN FARMS								
Farmsnumber	3.8%	1.9%	0.7%	1.6%	0.1%	95.8%	1.0%	101%
Land in farmsacres	2.9%	5.7%	0.2%	0.4%	0.05%	93.7%	0.7%	101%
FARMS BY SIZE								
1 to 9 acres	7.4%	4.3%	1.7%	1.8%	0.3%	92.1%	1.4%	102%
10 to 49 acres	4.8%	1.6%	0.8%	2.0%	0.1%	95.6%	1.1%	101%
50 to 179 acres	2.7%	1.3%	0.5%	1.9%	0.1%	96.2%	0.9%	101%
180 to 499 acres	2.3%	1.4%	0.3%	1.1%	0.1%	97.1%	0.8%	101%
500 acres or more	2.3%	1.9%	0.2%	0.4%	0.0%	97.2%	0.6%	100%
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS								
Total	3.7%	0.5%	1.7%	0.2%	0.1%	97.7%	0.4%	101%
Market value of agricultural products sold	3.7%	0.5%	1.7%	0.2%	0.1%	97.7%	0.4%	101%
Crops, including nursery and greenhouse crops	4.8%	0.4%	1.9%	0.3%	0.1%	97.7%	0.5%	101%
Livestock, poultry, and their products	2.7%	0.7%	1.5%	0.2%	0.1%	97.6%	0.4%	100%
Government payments	1.4%	0.6%	0.2%	0.6%	0.03%	98.6%	0.5%	100%
FARMS BY ECONOMIC CLASS								
Less than \$2,500	5.4%	3.3%	0.5%	2.0%	0.1%	94.0%	1.2%	101%
\$2,500 to \$4,999	4.1%	1.8%	0.5%	2.0%	0.1%	95.6%	1.1%	101%
\$5,000 to \$9,999	3.7%	1.7%	0.6%	2.0%	0.1%	95.6%	1.1%	101%
\$10,000 to \$24,999	3.1%	1.5%	0.7%	1.9%	0.1%	95.9%	1.1%	101%
\$25,000 to \$49,999	2.7%	1.2%	0.7%	1.3%	0.1%	96.7%	0.9%	101%
\$50,000 or more	2.3%	0.7%	1.0%	0.4%	0.1%	97.9%	0.5%	101%
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)								
Oilseed and grain farming (1111)	0.9%	0.3%	0.1%	0.7%	0.0%	98.6%	0.3%	100%
Vegetable and melon farming (1112)	5.4%	2.9%	4.2%	4.6%	0.4%	86.3%	1.6%	100%
Fruit and tree nut farming (1113)	10.5%	1.1%	4.8%	0.9%	0.4%	91.2%	1.6%	100%
Greenhouse, nursery, and floriculture production (1114)	5.8%	0.7%	3.2%	0.8%	0.4%	93.6%	1.3%	100%
Other crop farming (1119)	2.6%	1.0%	0.3%	1.2%	0.1%	96.7%	0.8%	100%
Tobacco farming (11191)	0.8%	0.2%	0.2%	2.1%	0.0%	97.5%	0.1%	100%
Cotton farming (11192)	3.2%	0.5%	0.1%	1.4%	0.1%	97.5%	0.4%	100%
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	2.6%	1.0%	0.3%	1.2%	0.1%	96.7%	0.8%	100%
Beef cattle ranching and farming (112111)	4.4%	2.6%	0.3%	2.5%	0.1%	93.5%	1.1%	100%
Cattle feedlots (112112)	1.1%	0.4%	0.1%	0.1%	0.0%	99.1%	0.3%	100%
Dairy cattle and milk production (11212)	1.6%	0.3%	0.1%	0.2%	0.0%	99.1%	0.4%	100%
Hog and pig farming (1122)	2.7%	1.3%	0.3%	1.7%	0.1%	95.5%	1.1%	100%
Poultry and egg production (1123)	3.8%	1.4%	2.8%	0.9%	0.1%	93.5%	1.3%	100%
Sheep and goat farming (1124)	7.3%	8.3%	0.6%	1.3%	0.2%	88.3%	1.4%	100%
Aquaculture and other animal production (1125, 1129)	4.0%	2.6%	0.3%	1.2%	0.1%	94.5%	1.3%	100%

Source: 2017 Census of Agriculture

Only whites have a larger share of the large farms (500 acres or more) than they have of farms overall (97.2% versus 95.8% respectively). Whites are also the only group to have a smaller share of the smallest farms (under 10 acres) than their share of farms overall (92.1% versus 95.8% respectively). All of the minority groups have a greater share of the smallest farms (less than 10 acres) than their share of farms overall.

Table 6 shows the distribution of farms by certain characteristics within each race or ethnicity. For example, it indicates that 26.2% of farms that had one or more Hispanic producer were between 1 and 9 acres. This data, too, shows that minorities have a comparatively larger share of smaller farms and whites have a comparatively larger share of bigger farms. Only 12.9% of white farms were under 10 acres, in contrast with nearly 39% of Native Hawaiian/Pacific Islander farms, more than 33% of Asian farms, nearly 30% of AI/AN farms, and more than 26% of Hispanic farms. More than 15% of white farms were 500 acres or more, compared with just 8.9% of Hispanic farms, 14.5% of AI/AN farms, 4.4% of Asian farms, 3.6% of Black farms, and 5.8% of Native Hawaiian/Pacific Islander farms.

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Table 6. Distribution of Farms by Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -						
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported
FARMS BY SIZE							
1 to 9 acres	26.2%	29.6%	33.8%	15.5%	38.7%	12.9%	19.1%
10 to 49 acres	35.9%	23.5%	33.9%	36.2%	31.6%	28.5%	32.0%
50 to 179 acres	19.5%	19.0%	21.2%	34.0%	16.1%	27.8%	26.4%
180 to 499 acres	9.4%	11.0%	6.7%	10.7%	7.8%	15.6%	13.1%
500 acres or more	8.9%	14.5%	4.4%	3.6%	5.8%	15.2%	9.4%
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS							
Total	100%	100%	100%	100%	100%	100%	100%
Market value of agricultural products sold	99.1%	97.5%	99.7%	95.0%	99.4%	97.7%	97.4%
Crops, including nursery and greenhouse crops	63.3%	35.2%	54.5%	52.3%	52.4%	48.7%	53.9%
Livestock, poultry, and their products	35.9%	62.3%	45.3%	42.7%	47.0%	49.0%	43.5%
Government payments	0.9%	2.5%	0.3%	5.0%	0.6%	2.3%	2.6%
FARMS BY ECONOMIC CLASS							
Less than \$2,500	47.6%	57.9%	26.1%	44.0%	38.3%	33.1%	41.2%
\$2,500 to \$4,999	11.3%	9.6%	7.8%	13.5%	10.8%	10.3%	11.6%
\$5,000 to \$9,999	11.1%	10.1%	10.3%	14.9%	13.4%	11.5%	12.7%
\$10,000 to \$24,999	10.0%	9.3%	12.8%	14.7%	13.1%	12.4%	13.8%
\$25,000 to \$49,999	5.4%	4.7%	8.2%	6.1%	8.9%	7.7%	7.1%
\$50,000 or more	14.6%	8.4%	34.9%	6.9%	15.4%	25.0%	13.6%
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)							
Oilseed and grain farming (1111)	3.8%	2.5%	2.2%	7.1%	2.8%	16.4%	5.3%
Vegetable and melon farming (1112)	3.2%	3.4%	13.8%	6.6%	8.6%	2.0%	3.6%
Fruit and tree nut farming (1113)	13.2%	2.7%	33.9%	2.7%	19.3%	4.5%	7.9%
Greenhouse, nursery, and floriculture production (1114)	3.4%	0.8%	10.5%	1.2%	8.5%	2.2%	3.1%
Other crop farming (1119)	15.4%	11.2%	9.2%	17.7%	13.2%	22.7%	17.4%
Tobacco farming (11191)	0.04%	0.02%	0.04%	0.2%	0.0%	0.2%	0.02%
Cotton farming (11192)	0.4%	0.1%	0.1%	0.4%	0.2%	0.4%	0.2%
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	15.0%	11.1%	9.1%	17.0%	13.0%	22.1%	17.2%
Beef cattle ranching and farming (112111)	36.6%	41.9%	11.8%	49.9%	25.2%	31.1%	36.4%
Cattle feedlots (112112)	0.2%	0.1%	0.1%	0.0%	0.1%	0.7%	0.2%
Dairy cattle and milk production (11212)	0.8%	0.3%	0.2%	0.2%	0.6%	1.9%	0.7%
Hog and pig farming (1122)	0.8%	0.7%	0.5%	1.2%	1.3%	1.1%	1.3%
Poultry and egg production (1123)	2.2%	1.5%	9.2%	1.3%	2.2%	2.1%	2.9%
Sheep and goat farming (1124)	8.9%	19.8%	3.8%	3.8%	7.6%	4.3%	6.5%
Aquaculture and other animal production (1125, 1129)	11.6%	14.9%	4.9%	8.2%	10.5%	10.9%	14.6%

Source: 2017 Census of Agriculture

State-level data are consistent with the nationwide averages. Even in states with the highest percentage of minority farmers, minority farms tend to be smaller—and in some cases significantly smaller—on average than white farms. For instance, as Table 7 below illustrates, white farms are between 129% and 336% larger than Asian farms in the top five states where Asian principal producers are most heavily concentrated; and they are between 103% and 347% larger than Black farms in the five states where Black principal producers are most heavily concentrated. The only exceptions to this rule are American Indian/Alaskan Native farms in Arizona and Montana and Native Hawaiian/Pacific Islander farms in California. But even with these minor exceptions, the data continue to show that farmers in these racial groups are at a disadvantage relative to their non-minority peers. As to Native Hawaiians and Pacific Islander farmers, while their farms are slightly larger than white farms in California, in every other state where they are most heavily concentrated their farms are significantly smaller—they are less than one sixth the size of white farms in both Florida and Oregon.¹⁶³

And, as discussed below, AI/AN farms are generally less lucrative than non-minority farms notwithstanding their average larger size¹⁶⁴—indeed, the net cash income of AI/AN farms is the lowest of any group other than Blacks. Moreover, a 2019 GAO study concluded that while only a quarter of farms on 76 Indian reservations were operated by non-AI/AN farmers, those farms comprised nearly 40% of the total acreage and 90% of the revenues.¹⁶⁵

¹⁶³ Moreover, given the very small number of Native Hawaiian or Pacific Islander farms—there are only 314 farms with Native Hawaiian or Pacific Islander producers in California—state averages can be easily skewed by even one or two outliers.

¹⁶⁴ Recall, though, that state-level data suggest that large farms in a small number of states are driving up the overall averages. (See Table 7 below and Table 5 in Appendix C.)

¹⁶⁵ See *infra* at pp. 70-71.

	Average farm size for Hispanic principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	336	431	28%
States			
Texas	252	528	110%
California	225	360	60%
New Mexico	654	1758	169%
Florida	103	209	104%
Colorado	368	807	119%
	Average farm size for American Indian or Alaskan Native principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	1289	431	-67%
States			
Arizona	1740	854	-51%
Oklahoma	259	457	77%
New Mexico	1237	1758	42%
Texas	272	528	94%
Montana	3533	2082	-41%
	Average farm size for Asian principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	132	431	227%
States			
California	157	360	129%
Hawaii	80	195	143%
Texas	121	528	336%
Florida	76	209	176%
Washington	127	339	168%
	Average farm size for Black or African American principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	121	431	258%
States			
Texas	118	528	347%
Mississippi	121	327	171%
Alabama	109	221	103%
Louisiana	90	311	244%
Georgia	114	241	113%
	Average farm size for Native Hawaiian or Other Pacific Islander principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	204	431	112%
States			
Hawaii	90	195	117%
California	573	360	-37%
Texas	121	528	337%
Florida	27	209	678%
Oregon	56	407	624%

Source: 2017 U.S. Census of Agriculture and 2010 Decennial Census.

The data above likewise show that minority farmers tend to generate less income as compared to white farmers. In terms of the **market value of agricultural products sold**, white farms produced the vast majority, or 97.7%, of the market value of agriculture products sold (*See* Table 5). The share of market value of production by all of the minority groups except Asians was less than their corresponding share of farms. AI/AN farms produced only 0.5% of the market value of agricultural products sold, despite being 1.9% of farms. (*See id.*) And Blacks produced only 0.2% of the market value of agricultural products sold despite being 1.6% of farms. (*See id.*)

In terms of **government payments**, while white farms made up 95.8% of farms and generated 97.7% of the market value of agriculture products sold, they received 98.6% of government payments. (*See* Table 5.) By contrast, all of the minority groups of farmers received government payments that were well below their share of farms. Hispanics received 1.4%, American Indians/Alaskan Natives received 0.6%, Asians received 0.2%, Blacks received 0.6%, and Native Hawaiian and Pacific Islanders received less than 0.05%.

In terms of farms by **economic class**,¹⁶⁶ about 58% of American Indian farms, nearly 48% of Hispanic farms, 44% of Black farms, and 38% of Native Hawaiian and Pacific Islander farms generated less than \$2,500 in revenue, compared with less than one-third of white farms. (*See* Table 6.) Indeed, Asians were the only minority group that generated higher revenues than white farmers, with about 43% of Asian farms generating more than \$25,000. Thus, in terms of revenue, white farmers had greater per-farm revenues than all of the minority groups except Asians.

While American Indians/Alaskan Natives had the highest average farm size by acreage—at 1,374 acres, compared with 431 acres for whites—they averaged only \$52,553 in market value

¹⁶⁶ The Agricultural Census defines “economic class” data as “the classification of farms by the sum of market value of agricultural products sold and Federal farm program payments.” *See* 2017 Ag. Census appendix B, B-7.

of the agricultural products they sold, compared with \$194,010 for white farmers. (*See* Table 4.) As mentioned above, a high proportion of American Indian farms are concentrated in cattle ranching, which is less profitable than other kinds of animal husbandry and crop farming.¹⁶⁷ The average income per acre for American Indian and Alaskan Native Farms was \$41, compared to more than ten times that for white farmers (\$450). (*See ibid.*) Tenure systems dating back to the Dawes Act of 1887 and the Indian Reorganization Act of 1934 have tended to increase the costs of land use for modern agriculture, making it difficult to move Indian land to higher valued alternative uses.¹⁶⁸

One USDA study showed how having a large farm (as measured by acreage) does not guarantee having high sales. In that study, USDA found that less than half of farms with at least 2,000 acres of farmland also generated sales of at least \$1 million, and many actually had sales of less than \$10,000.¹⁶⁹ USDA noted that farmland in arid areas, with little vegetation and poor soil, is not suitable for cropping and will thus often be used for livestock grazing, which generates low sales per acre of land.¹⁷⁰ In contrast, USDA found that the acreage of harvested cropland is more closely tied to sales: nearly 80% of farms that harvested 2,000 acres of cropland also realized at least \$1 million in Gross Cash Flow Income.¹⁷¹ Given the high number of AI/AN farms devoted to cattle ranching, this suggests that their comparatively large acreage is concentrated in less

¹⁶⁷ *See* Table 6 in Appendix C for average income per farm by kind of farming, which shows substantially lower average revenues for cattle ranching, as compared with crops, dairy, and poultry operations.

¹⁶⁸ *See* Anderson & Lueck (1992).

¹⁶⁹ James MacDonald, Robert Hoppe, & Doris Newton, USDA, Three Decades of Consolidation in U.S. Agriculture, EIB-189 (March 2018), at 8, <https://perma.cc/XZ6R-XZVN>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

productive land or they have not had sufficient financial capital to transition to more profitable farming sectors.

Net income also varied dramatically by racial group, with Black farms and American Indian/Alaskan Native farms having the lowest net incomes at \$3,509 and \$8,577, respectively. (See Table 8.) White farmers received 97.9% of net cash farm income, even though they made up 96.6% of farms. Their share of the government payments (99%, or \$8.85 billion, of the \$8.94 billion) was higher than their shares of revenues, expenses, or net income.

Although farms with Asian producers have the highest net income, at \$111,319, a closer look at the data shows that relatively small number of Asian farms drive up the overall average and thus skew the data. The majority of farms with Asian principal producers (57%) had revenues of less than \$25,000 (See Table 6). The NASS report on race, ethnicity, and gender noted that there were 4,437 Asian farms generating \$100,000 or more. Because there are so few Asian farms—only about 18,000 total, which is less than 1% of all farms—the few thousand of them that generate \$100,000 or more in revenue drive up the overall average of this group.

[Continued on next page]

	Farms with one or more producers who are:						
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native	Asian	Black or African American	Native Hawaiian or Other Pacific Islander	White	All
Number of farms	86,278	60,083	18,338	35,470	4,341	1,973,006	2,042,220
Land in farms (acres)	32,079,910	58,749,543	2,931,365	4,673,140	1,043,936	849,816,725	900,217,576
Average size of farm (acres)	372	978	160	132	240	431	441
Total							
Market value of products sold	\$ 21,765,056,000	\$ 3,537,975,000	\$ 7,457,497,000	\$ 1,416,256,000	\$ 710,952,000	\$ 381,050,061,000	\$ 388,522,695,000
Government payments	\$ 158,488,000	\$ 102,783,000	\$ 27,272,000	\$ 58,807,000	\$ 7,470,000	\$ 8,851,913,000	\$ 8,943,574,000
Farm-related income	\$ 596,161,000	\$ 237,027,000	\$ 160,975,000	\$ 87,042,000	\$ 25,644,000	\$ 16,592,565,000	\$ 16,847,824,000
Total farm production expenses	\$ 18,617,667,000	\$ 3,362,431,000	\$ 5,604,383,000	\$ 1,437,647,000	\$ 636,119,000	\$ 320,456,555,000	\$ 326,390,640,000
Net cash farm income	\$ 3,902,039,000	\$ 515,355,000	\$ 2,041,362,000	\$ 124,459,000	\$ 107,947,000	\$ 86,037,984,000	\$ 87,923,453,000
Per farm average							
Market value of products sold	\$ 252,267	\$ 58,885	\$ 406,669	\$ 39,928	\$ 163,776	\$ 193,132	\$ 190,245
Government payments							
(average per farm receiving)	\$ 15,492	\$ 12,601	\$ 14,000	\$ 7,108	\$ 12,704	\$ 14,004	\$ 13,906
Farm-related income	\$ 27,656	\$ 20,309	\$ 29,722	\$ 9,872	\$ 21,696	\$ 21,530	\$ 21,478
Total farm production expenses	\$ 215,787	\$ 55,963	\$ 305,616	\$ 40,531	\$ 146,537	\$ 162,420	\$ 159,821
Net cash farm income	\$ 45,226	\$ 8,577	\$ 111,319	\$ 3,509	\$ 24,867	\$ 43,608	\$ 43,053
Percent of All							
Number of farms	4.2%	2.9%	0.9%	1.7%	0.2%	96.6%	102.4%
Land in farms (acres)	3.6%	6.5%	0.3%	0.5%	0.1%	94.4%	101.9%
Market value of products sold	5.6%	0.9%	1.9%	0.4%	0.2%	98.1%	101.5%
Government payments	1.8%	1.1%	0.3%	0.7%	0.1%	99.0%	101.2%
Farm-related income	3.5%	1.4%	1.0%	0.5%	0.2%	98.5%	101.5%
Total farm production expenses	5.7%	1.0%	1.7%	0.4%	0.2%	98.2%	101.6%
Net cash farm income	4.4%	0.6%	2.3%	0.1%	0.1%	97.9%	101.0%

Source: Race, Ethnicity, Gender Profile, 2017, USDA. www.nass.usda.gov/AgCensus.
Uses data for any producer.

Some small farms, especially those under 10 acres or with less than \$10,000 in revenue, may be better viewed as “hobby” farms—that is, farms that are operated not primarily as a business but at least in large part for recreational reasons. If “hobby” farms are unequally distributed among race and ethnicity groups, they might skew the data one way or another. But excluding these farms from the analysis only underscores white farmers’ disproportionate dominance of the agricultural sector. Excluding farms under 10 acres, white principal farms make up 96.3% of farms, while Hispanic farms make up 3.2% of farms. American Indian/Alaskan Native farms and Black farms each make up just 1.5% of farms. Native Hawaiian/other Pacific Islander farms make up less than 0.1% of farms. (See Table 9). The pattern is similar when considering only farms with more than \$10,000 in revenue. Farms with white principal producers made up 97.2% of farms with more than \$10,000 in revenue. (See *ibid.*)

Table 9. Selected Farm Characteristics by Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -							Total
	Hispanic, Latino, or Spanish origin	American Indian or Alaska Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	
Number of farms	77,416	39,632	13,904	32,052	2,092	1,955,737	19,773	2,042,220
Share of all farms	3.8%	1.9%	0.68%	1.6%	0.10%	95.8%	1.0%	100%
Farms by Acreage								
Share of farms with 10+ acres within group	73.8%	67.9%	66.2%	84.5%	61.3%	87.1%	80.9%	86.6%
Share of farms with 10+ acres	3.2%	1.5%	0.52%	1.5%	0.07%	96.3%	0.9%	100%
Share of farms with <10 acres	7.4%	4.3%	1.72%	1.8%	0.30%	92.1%	1.4%	100%
Farms by economic class								
Share of farms with <\$10K revenue within group	30.0%	22.4%	55.9%	27.6%	37.5%	45.1%	34.5%	44.5%
Share of farms with \$10K+ revenue	2.6%	1.0%	0.86%	1.0%	0.09%	97.2%	0.8%	100%
Share of farms with <\$10K revenue	4.8%	2.7%	0.54%	2.0%	0.12%	94.7%	1.1%	100%

Source: 2017 Census of Agriculture

To summarize the findings above, the nationwide data shows that, on average, farms held by minorities tend to be smaller, have lower revenues, and have lower net incomes than non-minority farms.

The GAO, also drawing on the 2017 Census of Agriculture, reached similar conclusions in its 2019 report on credit and outreach to SDFRs.¹⁷² Looking at the aggregate, the GAO reported that “[o]n average, farms for which an SDFR was the primary producer (SDFR farms) were smaller and brought in less revenue than non-SDFR farms in 2017.”¹⁷³ Although SDFR farms represented 30% of all farms, they operated only 21% of all farm land and accounted for only 13% of the market value of agricultural products sold in 2017.¹⁷⁴ The GAO further noted that “[a]bout 55

¹⁷² As noted above, SDFR is short for socially disadvantaged farmer or rancher. In this GAO report, GAO included female farmers, in addition to minorities, within its definition of SDFR.

¹⁷³ GAO-19-539, Agric. Lending: Info. on Credit & Outreach to [SDFRs] Is Limited (2019), at 7, <https://perma.cc/5RD6-24VH>.

¹⁷⁴ *Id.*

percent of SDFR farms had fewer than 50 acres, and 88 percent had less than \$50,000 in total sales and government payments.”¹⁷⁵

A 2019 GAO study that investigated the credit needs and barriers to lending on tribal lands found similar results with respect to Native Americans. Using data from the 2012 Census of Agriculture, GAO looked at 76 Indian reservations (containing 23,000 farms and ranches) by primary farm or ranch operator. It found that the 25% of those farms and ranches that were non-Indian operated made up 39% of the overall acreage and 90% of the overall market value of agricultural products sold. The average size of AI/AN farms on these 76 reservations was just under 1600 acres, whereas farms with non-AI/AN principal producers were, on average, over 3000 acres. The 75% of farms and ranches that were Indian-operated made up only 61% of the overall acreage and generated just 10% of the market value of agriculture products sold. (See Table 10.)¹⁷⁶

Table 10. Agricultural Activity on 76 Selected Indian Reservations, by Primary Farm Operator (2012)

	Total number of farms	Total Share of farms (%)	Total Acreage of farms	Total share of acreage of farms (%)	Total market value of agricultural products sold	Total share of market value of agricultural products sold (%)
Indian-operated	17,948	75	28,560,057	61	\$ 361,145,000	10
Non-Indian operated	5,980	25	18,449,341	39	\$ 3,079,386,000	90
Total	23,800	100	47,009,398	100	\$ 3,440,531,000	100
Average farm size						
	Acres	Market Value				
Indian-operated	1,591	\$ 20,122				
Non-Indian operated	3,085	\$ 514,947				
Total	1,975	\$ 144,560				

Source: GAO-19-464, INDIAN ISSUES: Agricultural Credit Needs and Barriers to Lending on Tribal Lands, Table 2.
 Primary farm operator is a term previously used by the USDA Census of Agriculture and is roughly equivalent to “principal producer.”

¹⁷⁵ *Id.* These numbers are greater than discussed elsewhere in the report because GAO’s statistics and analysis included female farmers within its definition of SDFR.

¹⁷⁶ See GAO-19-464, Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands.

3. *Lower net worth of minority farmers*

Additionally, as one would expect given that minority farms are on average smaller and bring in less farm revenue and income, the data also show that minority farmers have lower net worth overall. The USDA's Economic Research Service provided the two tables below, which show the overall farm and household characteristics of SDFRs¹⁷⁷ (*i.e.*, minorities) and non-SDFRs (*i.e.*, non-Hispanic whites) from the 2017-2019 Agricultural Resource Management Surveys. These tables illustrate that, overall, minorities have lower mean and median levels of net worth, acreage, value of production, farm income, farm assets, and debt-to-asset ratio (Table 11), as well as lower average and median household income and non-farm assets than non-SDFRs (Table 12).

[Continued on next page]

¹⁷⁷ For these two tables, the term "SDFR" did not include women.

	Mean	
	Non-SDFR	SDFR
	(CV %)	
Farm characteristics		
Farm net worth (\$)	1,058,970	802,657
	(1.04)	(5.26)
Acres owned	261	181
	(2.46)	(7.52)
Acres operated	413	306
	(1.92)	(10.55)
Total value of production (\$)	173,612	162,817
	(1.88)	(8.40)
Farm income to the household (\$)	21,265	13,851
	(4.26)	(16.49)
Farm assets (\$)	1,163,613	877,111
	(0.93)	(4.86)
Debt-to-asset ratio	0.09	0.07
	(3.05)	(11.13)
Total current and non-current liabilities (\$)	122,486	90,569
	(1.55)	(6.99)
Household characteristics		
Total household income ¹ (\$)	116,782	103,400
	(2.57)	(4.99)
Non-farm assets	677,939	509,136
	(2.53)	(3.94)
Total number of farms	1,860,436	162,801

¹ Includes farm and non-farm sources.
Source: USDA, National Agricultural Statistics, Service and Economic Research Service, Agricultural Resource Management Survey 2017-2019
SDFR here indicates only racially and ethnically disadvantaged (minority farmers). It does not include white female farmers.

	Non-SDFR	SDFR
Farm characteristics		
Farm net worth (\$)	464,414	298,252
Acres owned	67	27
Acres operated	85	40
Total value of production	7,140	2,625
Farm income to the household (\$)	-660	-2,680
Farm assets (\$)	510,100	313,499
Debt-to-asset ratio	0.00212	0.00208
Total current and non-current liabilities (\$)	1,010	550
Household characteristics		
Total household income ¹ (\$)	76,905	67,165
Non-farm assets (\$)	366,701	312,081

¹ Includes farm and non-farm sources.
Source: USDA, National Agricultural Statistics, Service and Economic Research Service, Agricultural Resource Management Survey 2017-2019
SDFR here indicates only racially and ethnically disadvantaged (minority farmers). It does not include white female farmers.

4. *The differences between minority and non-minority farmers are not primarily attributable to race-neutral factors*

The above disparities are expected consequences of past discrimination in USDA farm loan programs, which, the evidence shows, has restricted minority farmers' access to the credit needed to sustain and develop their farms. And as shown by the state-specific data above, these disparities are not largely explainable by other race-neutral factors such as geography or agricultural product sold. A possible response to all of this is that the observed disparate outcomes between minorities and non-minorities are attributable to race-neutral characteristics of farmers, such as prior experience in farming or number of annual days devoted to farming versus other pursuits, that might influence their success in farming. But data across these and other demographic metrics, included in Table 13 below, show that minority and non-minority farmer characteristics are actually quite similar.

For instance, one possible explanation for the disparities we observe is that minority farmers might be disproportionately new entrants to the agricultural field as historic barriers to entry (including past USDA discrimination) are lifted, and that the more limited experience of these farmers leads to poorer outcomes. But the data show no clear delineation in new farmers between minorities in general versus white farmers. Black and AI/AN farmers are new or beginning farmers in roughly the same proportion as white farmers. Hispanic, Asian, and Native Hawaiian/Pacific Islander producers are new and beginning farmers at somewhat higher rates. But these comparatively high rates for new and beginning farmers are consistent with both historical discrimination and the present-day elimination of barriers to entry for minorities. If there is pent-up demand for entering the agricultural industry among minority groups that had been held back by historical discrimination, then we would expect a surge in new farmers from those groups when obstacles are removed. Moreover, even if the poorer outcomes for minorities could be explained

in part by a comparatively larger share of new and beginning farmers, it would still likely be an artifact of prior discrimination that prevented these groups from entering farming at comparable rates to white farmers in earlier eras. And because growing any business depends on compounding returns over time, the delayed entry into farming will put minorities in a worse position even if there is no current, ongoing discrimination by USDA.

Additionally, when we look at the share of new and beginning farmers compared with the share of all producers, we see that they are also quite similar. (*See* Table 14.) For instance, white farmers made up 94.8% of new and beginning farmers and 95.4% of farmers overall; Black farmers made up 1.4% of all new and beginning farmers and 1.3% of farmers overall; AI/AN farmers made up 1.7% of new and beginning farmers and 1.7% of farmers overall. While Hispanics and Asians are a slightly higher share of new and beginning farmers, their share is not so much higher as to explain significant disparities in other metrics such as farm revenues. Thus, the racial and ethnic differences we are seeing in terms of size, revenue, and net income are most likely not being driven by a disproportionately large influx of new and beginning farmers from the minority groups. In fact, previous research has shown that the share of farmers with less than five years of experience has fallen from 18% in 1978 to 13% in 2017.¹⁷⁸ Because the share of new and beginning farmers has been declining over time, their significance in driving overall averages has also been declining. And to the extent that differences in experience between minority groups and white farmers can explain differences in outcomes, any experience gap may well itself be a result of past discrimination.

¹⁷⁸ Rafter Ferguson, *Losing Ground Farmland Consolidation and Threats to New and Black Farmers and the Future of Farming* (2021), <https://perma.cc/SL2C-MTCQ>.

Another possible explanation for the observed disparities between minority and non-minority farmers is that minority farmers may be more likely to engage in farming as a secondary occupation or hobby, especially given the average smaller size of minority farms. But the data show otherwise. As Table 13 illustrates, American Indian and Alaskan Native, Asian, and Black producers were actually *more* likely to be engaged in farming as a primary occupation than whites. And Hispanic and Native Hawaiian/Pacific Islander producers were just slightly less likely to have farming as their primary occupation. Moreover, around 40% of farmers in any group worked 200+ days off the farm—and Black producers were the least likely to work that many days off the farm, with only 34.9% of Black farms having a producer engaged in extra-farm work for 200+ days out of the year. Indeed, recall from above that excluding from the analysis all farms under 10 acres or all farms with less than \$10,000 in revenue did not eliminate disparities.

[Continued on next page]

	Farms with Hispanic Producers	Farms with American Indian/Alaska Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/Pacific Islander Producers	Farms with White Producers
Sex						
Male	65.1%	56.2%	55.2%	70.9%	57.4%	64.0%
Female	34.9%	43.8%	44.8%	29.1%	42.6%	36.0%
Age						
<35	9.4%	9.5%	9.4%	5.4%	11.0%	8.4%
35-64	64.4%	58.8%	64.8%	6.0%	60.4%	57.7%
65 and older	26.4%	31.7%	25.8%	43.4%	28.6%	33.9%
Primary occupation						
Farming	39.9%	46.6%	47.9%	44.1%	38.8%	41.5%
Other	60.1%	53.4%	52.1%	55.9%	61.2%	58.5%
Days worked off farm						
None	30.7%	36.6%	31.7%	39.7%	28.3%	38.6%
1 to 199	27.9%	24.6%	30.0%	25.4%	28.5%	21.0%
200 +	41.4%	38.8%	38.3%	34.9%	43.2%	40.4%
Other characteristics						
With military service	10.7%	11.0%	6.6%	19.3%	13.2%	10.8%
New and beginning farmers	36.3%	27.5%	40.2%	28.9%	35.1%	26.6%
<i>Average age (years)</i>	55	56.6	54.9	60.8	54.9	57.5

Source: Census of Agriculture, 2017
Uses data for any producers.

	New and Beginning Farmers	Share	All Producers	Share
American Indian/Alaska Native	15,347	1.7%	58,199	1.7%
Black or African American	12,884	1.4%	45,508	1.3%
Asian	8,683	1.0%	22,016	0.6%
Pacific Islander/Native Hawaiian	1,007	0.1%	3,018	0.1%
Hispanic	40,858	4.5%	112,451	3.3%
White	861,491	94.8%	3,244,344	95.4%
Two or More Races	8,141	0.9%	26,749	0.8%
Total	908,274	100.0%	3,399,834	100%

Source: 2017 U.S. Census of Agriculture
Uses data for any producer.

Other factors similarly do not provide a robust alternative explanation for the disparities observed. As discussed above, disparities were observed when considering only rural populations—every minority group had a smaller share of producers than their share of nationwide

rural population.¹⁷⁹ Even when confining the analysis to individual states, disparities were observed for most minority groups.¹⁸⁰ In Texas, for example, Hispanics make up nearly 40% of the statewide population, and over 30% of the rural population, but only 11.3% of Texas farms had a Hispanic principal producer. In Mississippi, Blacks make up nearly 40% of the rural population, but only 14% of the farms had Black principal producers. By contrast, whites make up less than 60% of the rural population in Texas, but over 95% of the farms in Texas have a white principal producer. And even within a single sector, like cattle ranching, disparities persist: The average revenues for most minority groups in the cattle ranching sector were lower—and sometimes substantially lower—than revenues for white cattle ranchers.¹⁸¹

C. Existing Disparities are Consistent with the Expected Effects of Past Discrimination in USDA Loan Programs

The disparities between minority and non-minority farmers today cannot be explained solely by differences in factors untainted by discrimination. These disparities are instead consistent with what one would expect given historical discrimination against minority farmers in USDA's loan programs and the nature of agricultural credit markets.

One recognized technique used in disparity studies to establish the linkage between statistical disparities and discrimination is to compare minority participation in a given activity, such as farming or a lending program, to a benchmark that expresses the level of participation that would reasonably have been expected absent discrimination.¹⁸² As discussed above, and shown in

¹⁷⁹ See *supra* Section VII.B.1.ii.

¹⁸⁰ See *supra* Section VII.B.1.iii.

¹⁸¹ See *infra* Section VII.C.

¹⁸² This is often used to defend the use of set asides in government contracting for minority businesses owners. For a detailed discussion, see Jon Wainwright & Collette Holt, Transportation

Table 15 below, as of 2010, there were substantial disparities between the share of minorities in the general population and their corresponding shares of the 2017 farm producer population:

- Although Blacks comprised 12.2% of the population, they accounted for only 1.3% of producers;
- Although Hispanics comprised 16.3% of the population, they accounted for only 3.3% of producers;
- Although Asians comprised 4.7% of the population, they accounted for only 0.6% of producers;
- Although Native Hawaiian and Pacific Islanders comprised 0.2% of the population, they accounted only for 0.1% of producers.
- Non-minorities (white non-Hispanics) made up 63.7% of the population but accounted for 90.1% of producers.

	Number	Share of Producers	Share of Population
American Indian/Alaska Native	58,199	1.7%	0.7%
Black or African American	45,508	1.3%	12.2%
Asian	22,016	0.6%	4.7%
Pacific Islander/Native Hawaiian	3,018	0.1%	0.2%
Hispanic	112,451	3.3%	16.3%
White	3,244,344	95.4%	72.4%
Non-minority (White Non-Hispanic) **	3,063,170	90.1%	63.7%
Some other race (alone)			0.2%
Two or More Races	26,749	0.8%	1.9%
Total	3,399,834		100%
Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-hispanics in the race categories.			
** Note: Provided by a special tabulation from USDA.			
Source: 2017 U.S. Census of Agriculture. Uses data for any producer.			

These disparities are especially telling when considering that the proportion of minority farms in all but one group (American Indian/Alaskan Natives) has been decreasing while the proportion of

Research Board, *Guidelines for Conducting a Disparity & Availability Study for the Federal DBE Program*, Rep. 644 (2010), <https://perma.cc/CFY4-AWA9>.

minorities in the general population have been increasing (and, as discussed above, the increase in AI/AN farms is likely due, in part, to better census coverage). And, as shown above in Figure 6, American Indians/Alaskan Natives made up 2% of the rural population overall, so even this group was underrepresented in terms of their share of farms when compared to their share of the population in rural areas. Moreover, as discussed above, minority farms are generally smaller by acreage, by shares of the market value of products sold, and by net income, compared with non-minority farms.

In terms of the **market value of agricultural products sold**, most minority groups had an even smaller share of market value than they had of farms in 2017. (See Table 4.) For instance,

- Blacks had 1.6% of the farms but only 0.2% of the market value of agricultural products sold; and
- American Indians and Alaskan Natives had 1.9% of farms and only 0.5% of the market value of products sold.

In contrast, whites had 95.8% of farms and 97.7% of the market value of agricultural products sold. This was consistent across the different types of crops and animal products. As shown in the table below,¹⁸³ farms with white producers produced more than 96% of the market value of agriculture products sold except for two cases (fruits, tree nuts and berries (94.9%) and poultry and eggs (93.8%)) and had more than 95% of the farms except for three cases (vegetables, melons, potatoes, and sweet potatoes (92.2%); fruits, tree nuts, and berries (94.9%); and sheep, goats, wool, mohair, and milk (94.2%)). Farms with white producers also had the vast majority of livestock

¹⁸³ Some of the totals listed in Table 16 may be greater than 100% because each farm has up to four producers. If a farm has multiple producers who do not all belong to the same racial group, that farm is counted once in each column corresponding to the racial groups to which the producers belong. For example, if a farm has two producers, one white and one Black, the farm is counted twice—once in the column for “white only” and once in the column for “Black or African American only”; but if a farm has two or more white producers, the farm is counted only once in the “white only” column.

inventory. As of December 31, 2017, inventory on white farms constituted more than 95% of almost every type of livestock, with goats (94.5%) being the sole exception.

	Farms with Hispanic Producers	Farms with American Indian/Alaska Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/Pacific Islander Producers	Farms with White Producers	Total
Share of Market Value of Agriculture Products Sold							
Crops	6.6%	0.7%	2.2%	0.4%	0.2%	98.2%	102%
Grains, oilseeds, dry beans, dry peas	1.2%	0.5%	0.2%	0.3%	0.0%	99.6%	101%
Tobacco	0.7%	0.3%	0.1%	1.1%	0.0%	98.9%	100%
Cotton and cottonseed	3.6%	1.2%	0.2%	0.8%	0.1%	98.9%	101%
Vegetables, melons, potatoes, sweet potatoes	15.5%	0.7%	4.4%	0.6%	0.4%	96.3%	102%
Fruits, tree nuts, berries	17.6%	1.3%	7.7%	0.5%	0.6%	94.9%	105%
Nursery, greenhouse, floriculture, sod	14.5%	0.7%	6.0%	0.7%	0.6%	96.6%	104%
Cultivated Christmas trees, short rotation woody crops	4.0%	1.9%	0.8%	0.1%	0.3%	99.9%	103%
Other crops and hay	5.9%	1.7%	0.5%	0.7%	0.4%	98.8%	102%
Livestock, poultry, and products	4.6%	1.1%	1.6%	0.3%	0.1%	97.9%	101%
Poultry and eggs	3.7%	1.3%	5.8%	0.5%	0.2%	93.8%	102%
Cattle and calves	4.4%	1.4%	0.1%	0.3%	0.1%	99.0%	101%
Milk from cows	8.0%	0.5%	0.2%	0.1%	0.2%	99.7%	101%
Hogs and pigs	2.1%	0.2%	0.1%	0.3%	0.0%	99.8%	100%
Sheep, goats, wool, mohair, milk	10.3%	4.9%	0.5%	0.4%	0.1%	98.9%	105%
Horses, ponies, mules, burros, donkeys	5.0%	2.1%	0.6%	0.5%	0.2%	99.0%	102%
Aquaculture	4.1%	1.2%	2.4%	0.4%	2.7%	97.4%	104%
Other animals and animal products	3.8%	1.3%	3.0%	0.5%	0.6%	99.1%	105%
All Market Value of Agriculture Products Sold	5.6%	0.9%	1.9%	0.4%	0.2%	98.1%	101%
Share of Farms by Type of Agriculture Products Sold							
Crops	3.4%	1.8%	1.2%	1.3%	0.2%	97.6%	102%
Grains, oilseeds, dry beans, dry peas	1.3%	1.1%	0.2%	0.7%	0.1%	98.7%	101%
Tobacco	0.9%	0.2%	0.1%	1.6%	0.0%	98.5%	100%
Cotton and cottonseed	3.4%	0.9%	0.2%	1.7%	0.1%	98.2%	101%
Vegetables, melons, potatoes, sweet potatoes	5.6%	3.5%	3.8%	3.9%	0.5%	92.2%	104%
Fruits, tree nuts, berries	11.1%	2.5%	5.4%	1.4%	0.9%	94.9%	105%
Nursery, greenhouse, floriculture, sod	7.3%	1.9%	4.4%	1.5%	0.8%	96.1%	105%
Cultivated Christmas trees, short rotation woody crops	2.9%	1.2%	1.0%	0.6%	0.2%	99.4%	102%
Other crops and hay	2.8%	2.0%	0.4%	1.2%	0.1%	98.3%	102%
Livestock, poultry, and products	4.1%	3.4%	0.6%	1.8%	0.2%	96.7%	103%
Poultry and eggs	5.3%	3.2%	1.6%	1.3%	0.3%	97.7%	104%
Cattle and calves	3.5%	2.9%	0.3%	2.0%	0.1%	97.0%	102%
Milk from cows	1.7%	0.6%	0.2%	0.2%	0.1%	99.8%	101%
Hogs and pigs	3.8%	2.8%	0.7%	1.9%	0.3%	97.6%	103%
Sheep, goats, wool, mohair, milk	6.7%	6.8%	0.8%	1.4%	0.4%	94.2%	103%
Horses, ponies, mules, burros, donkeys	4.5%	4.4%	0.5%	1.5%	0.2%	97.2%	104%
Aquaculture	4.5%	2.2%	2.2%	1.4%	0.5%	97.4%	104%
Other animals and animal products	4.5%	3.1%	1.1%	1.1%	0.4%	98.1%	104%
Total Number of Farms	4.2%	2.9%	0.9%	1.7%	0.2%	96.6%	102%
Livestock Inventory (Dec 31, 2017)							
Broilers and other meat-type chickens	3.8%	2.0%	9.2%	0.7%	0.1%	97.6%	110%
Cattle and calves	4.0%	2.0%	0.2%	0.7%	0.1%	98.5%	102%
Goats	8.8%	5.4%	1.1%	1.7%	0.4%	94.8%	103%
Hogs and pigs	1.8%	0.2%	0.1%	0.3%	0.0%	99.8%	100%
Horses and ponies	4.2%	5.3%	0.4%	1.3%	0.2%	95.9%	103%
Layers	3.5%	0.3%	1.4%	0.1%	0.1%	98.7%	101%
Pullets	2.7%	0.5%	0.8%	(D)	(D)	99.3%	101%
Sheep and lambs	8.1%	6.8%	0.9%	0.4%	0.2%	95.7%	104%
Turkeys	3.2%	0.4%	1.5%	(D)	(D)	98.7%	101%
Number of farms	86,278	60,083	18,338	35,740	4,341	1,973,006	2,042,220

Source: 2017 Census of Agriculture. Uses data for any producer.

The totals column may not sum to 100% because producers can be of more than one race. The Hispanic column is not included in the total column because Hispanics can be of any race and are thus already counted in the race columns.

In terms of **Net Cash Farm Income** (*see* Table 8), whites received 97.97% of the Net Cash Farm Income even though they had just 95.8% of the farms. By contrast, Blacks had 1.6% of the farms but only 0.1% of the Net Cash Farm Income, and American Indians and Alaskan Natives had 1.9% of farms but only 0.6% of the Net Cash Farm Income.

In terms of the **per-acre market value of agricultural products sold**, white farmers averaged \$450 per acre. (*See* Table 4.) AI/AN farmers averaged the lowest by far at \$41/acre. And Black farmers averaged the second lowest at \$243/acre. These metrics are especially notable because the 1974 Report on the Status of Minority Farms in the United States reported similar numbers for AI/AN farmers but found that Black farms actually had higher income from farm and farm-related sources per acre than white farmers at that time.

The value of land and buildings per acre and the value of total assets per acre are both typically greater for black farms. By two measures of efficiency — net farm and farm-related income per acre and per dollar of asset — black farms are of equal or greater efficiency. However, overall, as well as in each tenure class, the average size of black farms in acres is considerably smaller than for all farms. While black operators appear to do well with the resources they control, the small quantity of resources controlled places a serious upper limit on farm income.¹⁸⁴

Less than 10 years later, the 1982 Civil Rights Report about the decline in the number of Black farmers noted:

The adverse conditions which historically affected black farmers still exist to some extent today. Most significant is the competitive disadvantage faced by black farmers due to the relatively small size of their landholdings. While the average commercial black-operated farm in the south is 128 acres, the average white-operated farm is more than three times that size—428 acres...Economies of scale, research and technology, tax benefits, government price and income supports, and commercial lending all militate against the survival of black-operated small farms.

¹⁸⁴ Allen R. Thompson & Michael Green, USDA, ESS Staff Report, NRED 80-4, The Status of Minority Farms in the United States, (“1974 Rep.”) at 49.

Disadvantageous economies of scale prevent black farmers from reaping the benefits of many technological advancements. The cost of basic equipment minimally necessary to run a commercial farm is much greater in proportion to the number of acres of land help by the average black farmer than it is for white farmers. Because of their small landholdings, black commercial farmers invest in less machinery and earn smaller profits per farm than do white farm operators.¹⁸⁵

Thus, after less than a decade, the profitability of Black farms had diminished substantially. And this disparity persists into the present day.

Another example is comparing income across sector. Cattle farming and ranching was the predominant industry sector for all farmers in the U.S. for all groups except Asians, where it was the third most predominant industry. Although half of Black farms were in cattle ranching, their earnings (\$14,213) were just a small fraction of the sales by white cattle ranches (\$110,740). (*See* Table 17.) Similarly, American Indian/Alaskan Natives, Asians, and Native Hawaiian/Pacific Islander farms all had revenues that were less than half of the revenues of white farms.

Table 17. Cattle Farming and Ranching, 2017

	Farms with Hispanic Producers	Farms with American Indian/Alaskan Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/Pacific Islander Producers	Farms with White Producers
Share of Farms	36.6%	41.9%	11.8%	49.9%	25.2%	31.1%
Ave Sales (\$)	\$ 135,675	\$ 53,017	\$ 46,068	\$ 14,213	\$ 47,196	\$ 110,740

Source: Census of Agriculture, 2017. Uses data for any producer.

The disparities between the size of the minority population and their relative shares of the farming market across a number of metrics are large. These outcomes can be influenced by multiple factors, but one way the linkage between statistical disparities and discrimination is

¹⁸⁵ 1982 Rep. at. 50-51. The 1982 report also noted that federally funded research resulted in technology that has been geared towards large scale farming and the economies of scale were not inherent in nature but a result of a bias towards large scale farming in federally funded research and development of technology. *Id.* at 51-52.

shown is through the introduction of anecdotal or qualitative evidence. If the thrust of the qualitative evidence is consistent with the statistical disparities observed, the case for the linkage is strengthened accordingly.

As set forth above, there are vast numbers of anecdotal accounts of discrimination against minority farmers in USDA loan programs, including thousands of civil rights complaints filed as part of lawsuits by Black, Native American, and Hispanic farmers, as well as administrative complaints at USDA. The disparities set forth above are consistent with the types of complaints that have been made, and they are consistent with some of the results that we see. For instance, at the same time minority farms were diminishing, leading to the underrepresentation of minority farmers in the United States today, hundreds, if not thousands, of complaints were made, including allegations that:

- USDA did not provide the same levels of outreach to minority farmers, such that minority farmers were not aware of existing loan programs and eligibility;
- When minority farmers did apply for USDA loans, USDA officials did not provide the same levels of assistance to minority farmers in completing their loan applications, at times withholding or providing false or misleading information to them;
- USDA denied minority farmers' loan applications at higher rates, arbitrarily, and sometimes without explanation;
- When minority farmers did obtain USDA loans, they were often in lower amounts, on less favorable terms, with additional requirements not imposed on white farmers, arbitrarily reduced, and so untimely as to be useless;
- USDA did not provide the same levels of education and technical assistance to minority farmers,¹⁸⁶ such that minority farmers did not diversify their crops, invest in technologies that could increase productivity, or adopt mechanization at the same rates as non-minority farmers;
- USDA did not inform minority farmers of loan servicing options or provide the same levels of loan servicing to minority farmers, at times even accelerating minority

¹⁸⁶ For instance, reporting indicates that there was a lack of assistance for farm business planning; a lack of targeted training on farm business management and credit acquisition issues; and that the Agricultural Extension Service was funded through land-grant universities and not Historically Black Colleges and Universities or Tribal Colleges.

farmers' loan repayment schedules, with the result that minority farms were more often subject to foreclosure.

Discriminatory actions like these deprived generations of minority farmers of needed credit, payments, and technical assistance and are entirely consistent with the results we see today, namely that minority farmers are disadvantaged in terms of acreage, revenue, net income, and other metrics vis-à-vis non-minority farmers and are a smaller (and in the case of Black farmers, dramatically smaller) proportion of the U.S. farming population today.

Numerous reports over the years provide supportive evidence. As discussed above, the evidence compiled and reviewed by Jackson Lewis in 2011 “substantiated claims [by focus group participants and community based organizations] of denial of equal program access and continuing institutional discrimination,”¹⁸⁷ which it said had “a broad and longstanding negative impact on ... SDGs—including the loss of scarce or irreplaceable farm lands.”¹⁸⁸ As just one example, the report explained that because of delays in the distribution of USDA funds, farmers often did not receive approved funds until after the planting season was half-finished, thus contributing to their losses.¹⁸⁹ Given their historic lack of access to USDA funds and services, minority farmers' corresponding lower farm incomes and wealth levels understandably hampered their ability to weather financial hardships, leading to the diminution of minority farms. And discriminatory actions, such as accelerating the payment schedules of minority farmers and failing to provide them with information and services about loan servicing options led to disproportionate numbers of minorities losing their farms to foreclosure.

¹⁸⁷ JL Rep. at viii.

¹⁸⁸ *Id.* at 64.

¹⁸⁹ *Id.* at 81-82.

Another way that the linkage between statistical disparities and discrimination can be shown is to consider the size of the observed disparities.¹⁹⁰ The larger the disparity, the less likely it is that non-discriminatory factors account for the entire difference. As discussed above, there are significant disparities between the acreage of minority farms and non-minority farms; between the market value of products sold by minority farmers and non-minority farmers; and between the net income of minority farmers and non-minority farmers. These large disparities, across several relevant metrics, strongly suggest that discrimination in agricultural lending markets, including by USDA, is a primary explanation.

A further reason to attribute the disadvantaged position of minority farmers today to prior discrimination in USDA's loan programs is to consider the longevity and timing of the discriminatory conduct. As discussed, there have been complaints of discrimination against minorities in USDA lending programs since the inception of those programs. As early as 1965, the USCCR reported wide-ranging complaints of discrimination, and in 2011, Jackson Lewis reported many of the same issues, concluding that discrimination in FSA lending was systematic and ingrained. In light of the longstanding discrimination against minority farmers in USDA loan programs, over at least a fifty-year period and documented as late as 2011, it is reasonable to expect that minority farmers would continue to suffer the lingering effects of that discrimination only

¹⁹⁰ See, e.g., Justus Veenman, "Measuring labor market discrimination: An overview of methods and their characteristics," *American Behavioral Scientist* 53.12: 1806-1823 (2010), <https://perma.cc/36X8-E24N>; George R. La Noue, "Standards for the second generation of Croson-inspired disparity studies." *The Urban Lawyer*: 485-540 (1994), <https://perma.cc/JB83-44VF>; The Equal Opportunity Commission Uniform Guidelines (29 C.F.R. § 1607(D)) provide a threshold of 80% (or the four-fifths rule), which that guides Federal enforcement agencies in carrying out their obligations in promoting equal employment opportunity.

about a decade later.¹⁹¹ This is especially true in light of the capital-intensive nature of agriculture, which requires significant up-front investment in land, equipment, and supplies, with returns measured in decades.

Once a disparity has been shown, one common way to rebut the implication that the disparity is a result of discrimination would be to show that any disparities substantially shrink in size, statistical significance, or both once other factors that are unlikely to be correlated with discrimination have been accounted for. But other factors that one might expect to negate the disparities above do not do so. For instance, the diminution of minority farms is not due to a shrinking minority population. Instead, minority farms have mostly been vanishing, not increasing, with consistent *increases* in minority populations. At the same time, the share of acreage attributed to minority farms has been stagnant: About 94% of farm acreage has been farmed by white farmers consistently over the 1978-2017 period even though the white population share has been decreasing over the same period. (See Table 3 in Appendix C.) Even compared to their proportion of the rural population or to the population of the states in which they are most heavily concentrated, minority producers are underrepresented (in some areas, significantly underrepresented). Moreover, a relative lack of experience among minority farmers cannot account for their diminished revenue or smaller size farms, as the proportion of new farmers in several

¹⁹¹ See, e.g., Peter A. Morrison, “‘Lingering effects’ of discrimination: tracing persistence over time in local populations”, *Population Research and Policy Review*, 25.2 (2006): 127-139, <https://perma.cc/5KD6-KG27>; Jeremy R. Porter, “Plantation economics, violence, and social well-being: The lingering effects of racialized group oppression on contemporary human development in the American South,” *Journal of Human Development and Capabilities* 12.3 (2011): 339-366, <https://perma.cc/EZ5M-HDYV>; Lindsey M. Burke & Jude Schwalbach, “Housing Redlining and Its Lingering Effects on Education Opportunity, Background. No. 3594,” *Heritage Foundation* (2021), <https://perma.cc/8FXN-XL49>.

minority groups is roughly equivalent to the proportion of new white farmers and, in any event, a comparative lack of experience is not an independent factor but instead one expected effect of a lengthy period of exclusion from farming. And time spent working off the farm does not explain those same disparities, as minority farmers, in many instances, spend less time off the farm than non-minority producers—and, as compared to whites, most minority groups have a higher percentage of producers engaged in farming as their primary occupation.¹⁹²

Nor is it likely that minority underrepresentation is simply the result of minorities choosing not to enter or stay in the business of farming, or not to expand farming operations, for reasons unrelated to discrimination. Rather, there is substantial evidence that historical discrimination in USDA loan programs has caused minority farmers to become “discouraged borrowers” who may be less likely to seek future USDA assistance precisely because of past USDA discrimination and a resultant lack of trust. Data provided by USDA on loan applications and application withdrawal rates, which are discussed in greater detail below, show that minority groups had much lower than expected loan application rates and higher loan application withdrawal rates than did white farmers—in other words, minority farmers were less likely to apply for USDA loans in the first place and their loan applications were more likely to be withdrawn if they did apply. This provides evidence that minority farmers expect unfair treatment by USDA and are more likely to be discouraged borrowers.

Furthermore, other factors are themselves strongly correlated with other effects of discrimination. For instance, many government programs tend to favor large farms, such as

¹⁹² See Table 13 and accompanying text above (discussing various farmer characteristics by race/ethnicity).

programs for certain crops that are economically feasible only at large scale.¹⁹³ Large farms are disproportionately farmed by whites, who therefore receive a disproportionate share of the benefits of those programs. As discussed above, however, the smaller size of minority farms in terms of acreage and revenue is likely due in no small part to historical discrimination in USDA loan programs that have deprived minority farmers of necessary credit and services.¹⁹⁴ That, in turn, has impeded minority farmers' ability to access the credit and collateral necessary to expand their farms, leaving them smaller and less profitable.

Another point to consider is the effect of various countermeasures taken over the years that would be expected to offset the discriminatory conduct and its effects and improve the relative position of minority farmers. But as discussed, although Congress and USDA have made various efforts over the years to remedy the problem of USDA discrimination, and the situation of some minority farmers may have improved, the data show disparities—some of them quite significant—that persist today. These ongoing disparities confirm that past efforts to remedy discriminatory effects and improve minority farmers' position have been inadequate. Many such efforts have aimed at increasing minority participation in USDA loan programs while failing to address borrower discouragement and lack of trust among minority farmers due to historic discrimination in USDA loan programs.

Perhaps the most well-known remedial effort relates to payments to minority farmers made as a result of litigation based on race discrimination. As explained elsewhere, though, those

¹⁹³ See USDA, National Commission on Small Farms, *A Time to Act*, at 10-11 (Jan. 1998) <https://perma.cc/NZY6-PPFW>.

¹⁹⁴ It also caused farmers to lose their land (and stop farming) and prohibit potential farmers from buying or starting a farm in the first place.

payments were inadequate for numerous reasons; and they provide no remedy to minority farmers who have encountered discrimination after the late 1990s, and who necessarily were not beneficiaries of those payment,¹⁹⁵ or to minority farmers not directly discriminated against but nonetheless experiencing the lingering effects of longstanding discrimination in USDA loan programs. In addition, one factor correlating the current adversities faced by minority farmers and discrimination in USDA lending is the historical lack of an effective and timely process for resolving the various complaints of discrimination in USDA's loan programs; resolution often came too late to fully redress compound effects of earlier discrimination. In a similar manner, remedial efforts taken to-date have failed to address the cyclical effects of discrimination that have largely hampered minority farmers' ability to accrue the capital necessary to maintain or expand their farming operations at the same rate as non-minority farmers.

D. Cyclical Effects of Past Discrimination in USDA Loan Programs

The negative effects of past discrimination in USDA's loan programs themselves have follow-on effects that make it more difficult for minority farmers to flourish today. In part because of USDA's discrimination, minority farmers have lower farm incomes and wealth levels, which in turn leads to higher rates of default and foreclosure and less access to other government funds, as well as private lending. In these areas, even where there is not ongoing intentional discrimination against minority farmers, the negative effects of prior discrimination in USDA loan programs continue to inhibit them. Minority farmers, given their experiences of prior discrimination in USDA loan programs, may have developed distrust of USDA and continue to expect unfair treatment, which makes them more likely to be discouraged borrowers. Thus, in addition to the

¹⁹⁵ The *Pigford* litigation covered Black farmers who encountered discrimination in USDA loan or other credit programs between 1981 and 1996; the *Keepseagle* litigation covered the years between 1981 and 1999; and the *Garcia* litigation covered the years between 1981 and 2000.

more direct long-term consequences inherent to the denial of needed credit—such as the inability to make timely investments to grow one’s business—there are indirect effects that reverberate across decades. The existence of these causal mechanisms, and their documented effects, provide a sound basis to conclude that existing disparities are the result of historic discrimination.

1. *Higher rates of delinquency, default, and foreclosure among minority farmers*

Because minority farms are smaller and less profitable, and minority farmers have corresponding less wealth and income to draw from, they are more vulnerable to adverse conditions, such as natural disasters, poor weather conditions, and economic downturns. They are less able to weather these negative shocks, which results in their having higher rates of delinquency on their loans and foreclosure on their farms. And due to the lack of trust and relationships with USDA officials as a result of longstanding USDA discrimination, they are less likely to seek and obtain access to loan servicing options to avoid default and foreclosure even when they are aware of servicing options.¹⁹⁶

The USDA data shows that the minority farmers who would be eligible for debt relief under Section 1005 have much higher levels of loan delinquency, bankruptcy, and foreclosure than non-minority farmers. Table 12 below is based on USDA data and shows the minority borrowers and direct and guaranteed loans eligible for debt relief under Section 1005, as well as the corresponding

¹⁹⁶ See, e.g., GAO-19-539 at 29. As will be discussed below, the small business financing literature has consistently shown that minority business owners are more likely to be discouraged borrowers than white business owners. Research using a number of different data sources on small business financing all show a greater proportion of minority business owners being discouraged borrowers than white business owners. That includes data from the Survey of Small Business Finances by the Federal Reserve Board of Governors, various years of the Small Business Credit Survey by various banks in the Federal Reserve System, and the Kauffman Firm Survey, which tracked firms over 2004-2011 period, by the Kauffman Foundation. Joseph Farhat & Alicia Robb, *Applied Survey Data Analysis Using Stata: The Kauffman Firm Survey Data*, (2014), <https://perma.cc/9KBU-HUG7>.

breakout for non-minority borrowers in terms of the number of borrowers, loans that were current versus not current as of January 1, 2021, and the status of non-current loans (*e.g.*, foreclosure, bankruptcy, delinquent). In terms of both borrowers and loans, the data shows that minority farmers have higher rates of delinquency, bankruptcy, and foreclosure.

	Minority		Non-Minority	
Direct Loans - Borrowers Current on All Debt - As of January 1, 2021				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Nbr of Loans
Current	11,609	19,955	63,360	98,084
Direct Loans - Borrowers Not Current on All Debt - As of January 1, 2021				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Nbr of Loans
Currently Not Collectible	755	1,494	1,371	2,803
Foreclosure	373	1,073	181	654
Bankruptcy	325	998	900	2,257
Litigation	67	212	286	687
Delinquent	3,408	7,928	7,441	15,353
Contingent Liability	2	2	3	3
Sub-Total	4,930	11,707	10,182	21,757
Total	16,539	31,662	73,542	119,841
% Not Current	29.8%	37.0%	13.8%	18.2%
Guaranteed Loans - Borrowers Current on All Debt - As of December 31, 2020				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Total Nbr of Loans
Current	2,313	3,442	35,446	51,830
Guaranteed Loans - Borrowers Not Current on All Debt - As of December 31, 2020				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Total Nbr of Loans
Liquidation/Foreclosure	37	69	191	339
Bankruptcy	17	28	194	362
Delinquent	211	309	1,534	2,433
Sub-Total	265	406	1,919	3,134
Total	2,578	3,848	37,365	54,964
% Not Current	10.3%	10.6%	5.1%	5.7%
Grand Total (DL+GL)	19,117	35,510	110,907	174,805
- Race and Ethnic designations of borrowers is as of July 14, 2021.				
- Some borrowers have both Direct and Guaranteed Loans.				
- Guaranteed Loan unpaid balances are estimated as of December 31, 2020, the most recent semi-annual data available from lenders.				
- Direct Loans category Contingent Liability represents equity recapture on borrowers' future commodity sales.				
Source: USDA				

In terms of **direct loans**, Table 18 shows that 29.8% of minority borrowers were not current on their loans as of January 1, 2021, versus 13.8% of non-minority borrowers. This means that 37% of all direct loans held by minority borrowers were not current, while only 18.2% of direct

loans held by non-SDA borrowers were not current. For the minorities' direct loans that were not current, more than two-thirds were classified as delinquent, 18% were in foreclosure or bankruptcy, and another 13% were classified as "Not Collectable," meaning that there were no underlying assets or collateral to collect on the loan.¹⁹⁷

In terms of **guaranteed loans**, 10.3% of minority borrowers were not current on their loans as of December 31, 2020, versus 5.1% of non-minority borrowers. In terms of loans (as opposed to borrowers), 10.6% of all guaranteed loans held by minority borrowers were not current, while only 5.7% of guaranteed loans held by white borrowers were not current. Thus, minority borrowers and minorities' loans were much more often not current on their direct and guaranteed loans covered by Section 1005 than their white counterparts.

In fact, while minority farmers made up 18.4% of all direct loan borrowers, they made up nearly one-third of the borrowers who were not current on their direct loans and 35% of the direct loans that were not current. (*See* Table 13.) They also made up two-thirds of the direct loan borrowers who were in foreclosure. Minority farmers made up just 6.5% of the guaranteed borrowers, but more than 12% of the guaranteed borrowers that were delinquent on their loans and more than 16% of the guaranteed borrowers in liquidation or foreclosure.

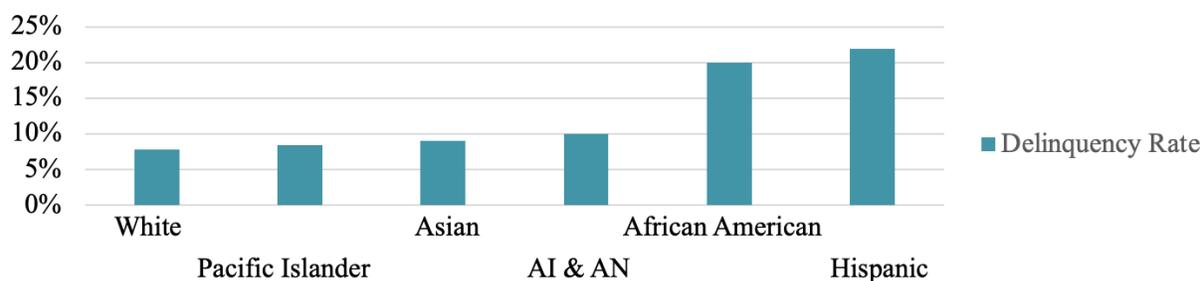
¹⁹⁷ For loan servicing purposes, a "delinquent borrower" is "a borrower who has failed to make all scheduled payments by the due date." *See* 7 C.F.R. § 761.2(b) (definition of "delinquent borrower"). If a delinquent borrower is unable to restructure or buyout the debt under Farm Loan Programs' primary loan servicing options, or fails to request loan serving, FSA is required to proceed with foreclosure.

Table 19. Farm Loan Programs Direct and Guaranteed Loans Unpaid Debt Balances of Minority Borrowers						
Direct Loans - Borrowers Current on All Debt - As of January 1, 2021				Minority Share		
Category	Nbr of Borrowers	Nbr of Loans	Total P&I	of Borrowers	of Loans	Total P&I
Current	11,609	19,955	\$1,738,425,084	15.5%	16.9%	15.1%
Direct Loans - Borrowers Not Current on All Debt - As of January 1, 2021						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Currently Not Collectible	755	1,494	\$54,614,022	35.5%	34.8%	32.5%
Foreclosure	373	1,073	\$105,624,587	67.3%	62.1%	72.4%
Bankruptcy	325	998	\$63,116,829	26.5%	30.7%	27.3%
Litigation	67	212	\$11,007,720	19.0%	23.6%	21.7%
Delinquent	3,408	7,928	\$571,384,683	31.4%	34.1%	34.7%
Contingent Liability	2	2	\$22,250	40.0%	40.0%	19.6%
Sub-Total Not Current	4,930	11,707	\$805,770,091	32.6%	35.0%	35.9%
Total	16,539	31,662	\$2,544,195,175	18.4%	20.9%	18.5%
% Not Current	29.8%	37.0%	31.7%			
Guaranteed Loans - Borrowers Current on All Debt - As of December 31, 2020						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Current	2,313	3,442	\$1,345,773,614	6.1%	6.2%	7.2%
Guaranteed Loans - Borrowers Not Current on All Debt - As of December 31, 2020						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Liquidation/Foreclosure	37	69	\$22,027,000	16.2%	16.9%	15.9%
Bankruptcy	17	28	\$11,060,405	8.1%	7.2%	7.2%
Delinquent	211	309	\$72,725,968	12.1%	11.3%	11.9%
Sub-Total Not Current	265	406	\$105,813,373	12.1%	11.5%	11.7%
Total	2,578	3,848	\$1,451,586,987	6.5%	6.5%	7.4%
% Not Current	10.3%	10.6%	7.3%			
Grand Total (DL+GL)	19,117	35,510	\$ 3,995,782,162	14.7%	16.9%	12.0%
- Race and Ethnic designations of borrowers is as of July 14, 2021.						
- Some borrowers have both Direct and Guaranteed Loans.						
- Guaranteed Loan unpaid balances are estimated as of December 31, 2020, the most recent semi-annual data available from lenders.						
- Direct Loans category Contingent Liability represents equity recapture on borrowers' future commodity sales.						
Source: USDA						

In terms of **loans** (as opposed to borrowers), the data shows that minorities' loans were much more often delinquent, in foreclosure, or in bankruptcy than non-minorities' loans as of January 1, 2021. (See Table 19.) While minority farmers held 20.9% of direct loans, they held only 16.9% of direct loans that were current, and 35% of direct loans that were not current. Minorities' loans made up 62.1% of the direct loans in foreclosure, more than 30% of the direct loans in bankruptcy, and nearly 35% of the direct loans designated as not collectible. The pattern was similar for guaranteed loans. Minority farmers held 6.5% of guaranteed loans, but only 6.2% of guaranteed loans that were current, 11.5% of guaranteed loans that were not, and 16.9% of guaranteed loans in liquidation or foreclosure.

Direct loan data from a July 23, 2021, USDA Internal Report on Farm Loan Programs on delinquency rates also shows that minority farmers in each racial or ethnic category have higher delinquency rates for direct loans than white farmers.¹⁹⁸ Hispanic borrowers had the highest delinquency rate of direct loans (22%),¹⁹⁹ followed by Blacks (20%), American Indians and Alaskan Natives (10%), and then Asians (9%). White borrowers had the lowest delinquency rate.

Figure 8: Delinquency Rates for Direct Loans by Race/Ethnicity



Source: USDA Internal Report on Farm Loan Programs (2021)

2. *Less access to government payments by minority farmers*

Given that minority farmers are in an economically disadvantaged position vis-à-vis white farmers, one would expect to see government payments going disproportionately to minority farmers. Instead, we see the opposite. As was shown in Table 4, in 2017, white farmers received nearly all (98.6%) of **government payments**, while farmers in each of the minority groups received less in government payments than their corresponding share of farms.

¹⁹⁸ This report used direct closed data from 2020 and 2021 and loan application data from 2016-2021.

¹⁹⁹ Without Puerto Rico (“PR”) included in the average, the Hispanic delinquency rate went down to 16% (PR is 99% Hispanic, and the delinquency rate is 70%).

- Hispanic farmers received 1.4% of government payments, even though they made up 3.8% of farms;
- American Indian and Alaskan Native farmers received 0.6% of government payments, even though they made up 1.9% of farms;
- Asian farmers received 0.2% of government payments, even though they made up 0.7% of farms;
- Black farmers received 0.6% of government payments, even though they made up 1.6% of farms; and
- Native Hawaiian and other Pacific Islander farmers received less than 0.1% of government payments, even though they made up 0.1% of farms.

The disproportionate allocation of government payments to white farmers was repeated recently through the Market Facilitation Program (“MFP”)²⁰⁰ and the Coronavirus Food Assistance Program (“CFAP”).²⁰¹ A 2021 report to Congress, comparing transfers and subsidies to minority and non-minority producers, indicated that minority status was unknown for more than 5% of payees²⁰² and 7% of payments.²⁰³

²⁰⁰ In 2018 and 2019, the FSA was authorized to distribute up to \$25.1 billion through the MFP to assist producers directly affected by retaliatory tariffs by China. *See* USDA, Market Facilitation Program, <https://perma.cc/947S-7JCX>.

²⁰¹ CFAP was created in 2020 in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to assist producers who faced market disruptions due to COVID-19. It consisted of \$16 billion in direct support to producers and \$3 billion to buy agricultural products and re-distribute them to Americans in need. *See USDA Announces [CFAP]*, USDA (Apr. 17, 2021), <https://perma.cc/B7N9-PTRE>.

²⁰² Many producers received separate payments under both phases of MFP and CFAP, so the total number of payees in Tables 20 and 21 below include those who received multiple payments over each year of the programs.

²⁰³ *See* Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs (Aug. 5, 2021). The report was produced in response to a request from Congress that USDA provide to the House Committee on Appropriations “a report on the distribution of farm subsidies, low-interest loans, and cost-share conservation programs and its impact on minority-owned farms.” *See id.* at 2; *id.* at 2; Agriculture, Rural Development, Food & Drug Administration, & Related Agencies Appropriations Bill, 2020, H. Rep. 116-107 (2019).

However, two rough estimates indicate that the majority of payments went to white farmers even accounting for the unknowns. For the first estimate, I considered only those payment recipients whose minority and non-minority status was known.²⁰⁴ For the second estimate, I allocated the unknown shares of payees and payments in the same proportions as the original shares.²⁰⁵ Both estimates indicate that more than 95% of CFAP payees and more than 98% of MFP payees were white farmers and that a similar proportion of payments went to white farmers.²⁰⁶

Reporting indicates that these disparities are attributable to the fact that agricultural funding tends to favor large farms.²⁰⁷ Thus, although likely not intentional, the disproportionate allocation of these funds from recent programs to non-minority farmers exacerbates the disparities discussed above. And given the magnitude of these programs—more than \$23 billion over two years under the MFP, and nearly \$24 billion under the CFAP—compared to the total amount of minority

²⁰⁴ In other words, I determined the total number of known minority and non-minority payees by subtracting the unknown payees from the total number of payees. I then divided the total number of known non-minority payees by the total number of known minority and non-minority payees (*e.g.*, for MFP non-minority payees: $1,165,038 / (1,248,692 - 66,189)$; and for CFAP non-minority payees: $1,413,221 / (1,545,390 - 71,347)$).

²⁰⁵ To the known minority and non-minority payee totals, I added the unknown payees in the same proportion as the known payee percentages calculated above. I then divided each of the estimated totals of non-minority and minority payees by the total number of payees (*e.g.*, for MFP non-minority payees: $1,165,038 + (.933 \times 66,189) / 1,248,692$; and for CFAP non-minority payees: $1,413,221 + (.914 \times 71,347) / 1,545,390$).

²⁰⁶ A third estimate, assigning the unknown shares a somewhat implausible 50/50 minority/non-minority status, shows similarly disproportionate payments—94% of CFAP payments and 96% of MFP payments—went to white farmers.

²⁰⁷ *See* USDA, National Commission on Small Farms, *A Time to Act*, at 10-11 (Jan. 1998).

farmers’ direct and guaranteed loan balances—only about \$4 billion (*see* Table 18)—one can expect the impact of these disparate payments to be significant.²⁰⁸

Table 20. Market Facilitation Program (MFP) Data, Program Years 2018-2019

2018	Non-Minorities		Minorities		Minority Status Unknown		Total	
	Payees	Payments	Payees	Payments	Payees	Payments	Payees	Payments
Number	552,828	7,941,683,376	7,191	64,897,740	30,651	619,175,657	590,670	8,625,756,773
Percentage	93.6%	92.1%	1.2%	0.8%	5.2%	7.2%	100%	100%
2019								
Number	612,210	13,153,507,091	10,274	168,101,106	35,538	1,176,855,183	658,022	14,498,463,380
Percentage	93.0%	90.7%	1.6%	1.2%	5.4%	8.1%	100%	100%
Total								
Number	1,165,038	21,095,190,467	17,465	232,998,846	66,189	1,796,030,840	1,248,692	23,124,220,153
Percentage	93.3%	91.2%	1.4%	1.0%	5.3%	7.8%	100%	100%
Total (% of known)	98.52%	98.91%	1.48%	1.09%			100%	100%
Total (allocating unknown w/same share as the original shares)	98.25%	98.31%	1.47%	1.09%			99.7%	99.4%
Total (allocating unknown 50/50 to minorities and non-minorities)	95.95%	95.11%	4.05%	4.89%			100.0%	100.0%

Source: Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021, Table 5 and author’s calculations.

[Continued on next page]

²⁰⁸ Also, as Table 6 shows, each minority group except for Hispanics received a lower average amount of general government payments according to the 2017 Census of Agriculture. Indeed, despite their disproportionate need, the average amount of government payments received by Black farmers (\$7,108) was only half of that received by white farmers (\$14,004), while American Indian and Alaskan Native, Asian, and Native Hawaiian and other Pacific Islander farmers all had lower than average government payments than white farmers.

Table 21. Coronavirus Food Assistance Program (CFAP) Data, through January 27, 2021

	Non-Minorities		Minorities		Minority Status Unknown		Total	
	Payees	Payments	Payees	Payments	Payees	Payments	Payees	Payments
CFAP 1	595,302	9,047,821,024	28,962	375,755,073	27,609	1,172,717,079	651,873	10,596,293,176
CFAP 2	817,919	11,442,486,251	31,860	348,928,936	43,738	1,539,200,507	893,517	13,330,615,694
Total	1,413,221	20,490,307,275	60,822	724,684,009	71,347	2,711,917,586	1,545,390	23,926,908,870
%								
CFAP 1	91.3%	85.4%	4.4%	3.5%	4.24%	11.1%	100%	100%
CFAP 2	91.5%	85.8%	3.6%	2.6%	4.90%	11.5%	100%	100%
Total	91.4%	85.6%	3.9%	3.03%	4.62%	11.3%	100%	100%
Total (% of known)	95.9%	96.6%	4.1%	3.42%			100%	100%
Total (allocating unknown w/same share as the original shares)	95.7%	95.3%	4.1%	3.37%			99.79%	98.72%
Total (allocating unknown 50/50 to minority/non-minority)	93.8%	91.3%	6.2%	8.7%			100%	100%

Source: Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021, Table 6 and author's calculations.

3. *Less access to private credit by minority farmers*

The historic inability of minority farmers to obtain FSA funds and services on par with white farmers also inhibits them from obtaining access to private credit today. In the Agriculture Improvement Act of 2018, Congress asked GAO to study agricultural credit services provided to SDFRs.²⁰⁹ Based on numerous interviews, as well as its review of statutes, regulations, government and academic literature, and data from multiple sources, GAO reported in 2019 that SDFRs “received proportionately fewer loans and less agricultural credit overall than non-

²⁰⁹ See Pub. L. No. 115-334, § 5416, 132 Stat. 4490, 4725 (2018). As used in this discussion, SDFR includes both minority and women farmers.

SDFRs.”²¹⁰ And it explained how “historical discrimination in agricultural lending adversely affects SDFRs’ current ability to obtain private credit in several ways.”²¹¹

First, “SDFRs who were unfairly denied USDA loans and other program benefits in the past have not been able to develop their farms in the same ways as farmers and ranchers who did receive loans.”²¹² Indeed, as discussed above, discrimination in USDA’s loan programs not only impeded minority farmers from “expand[ing] [their] operations and ... purchas[ing] land and equipment that c[ould] later be used as collateral,”²¹³ it also actively contributed to the diminution of minority farm lands. Consistent with the data and conclusions above, GAO thus reported that in 2017, “[o]n average,” SDFR farms continued to be “smaller and br[ing] in less revenue than non-SDFR farms.”²¹⁴

All three factors—collateral, farm size, and farm revenue—affect a farmer’s ability to obtain private credit.²¹⁵ As the GAO explained, “[m]any long-term agricultural loans require the borrower to pledge land as collateral to secure the transaction.”²¹⁶ It is both easier and less risky to lend to larger farms.²¹⁷ And “farm revenue is critical to demonstrating a borrower’s capacity to

²¹⁰ GAO-19-539 at 16.

²¹¹ *Id.* at 29.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 17.

²¹⁵ *See id.* at 24-27.

²¹⁶ *Id.* at 27.

²¹⁷ *See id.* at 24. As the GAO report explained, lenders have several incentives to lend to larger farms, including that (i) operators of smaller farms typically need smaller loans, and making many small loans is more time- and resource-intensive than making fewer, larger loans, (ii) large farms often produce major commodities such as corn, soybeans, and beef cattle, while small farms often produce specialty crops, and underwriting loans to large farms that produce major commodities is

repay an agricultural loan.”²¹⁸ Minority farmers’ unequal access to USDA funds and technical assistance historically, which negatively affected them with respect to all three factors, has consequently impeded their ability “to get subsequent and larger loans”—or even private loans at all.²¹⁹

Second, “historical exclusion from credit markets and farm programs has limited SDFRs’ familiarity with lending standards and resulted in less formal recordkeeping, which impairs their ability to obtain private-sector credit.”²²⁰ And third, “historical discrimination has led generations of SDFRs to distrust institutional lenders, making them less likely to apply for credit.”²²¹ In all of these ways, historic discrimination in USDA’s loan programs is impeding SDFRs from accessing private credit today.

A 2021 GAO report likewise noted that the fact that minority farmers are more likely to operate smaller, lower-revenue farms contributes to racial disparities in access to private capital and commercial loans by minority farmers.²²²

easier and less risky because more data are available on the market for those products, and (iii) programs such as crop insurance, which mitigate repayment risk, are geared toward large, major-commodity farmers, such that lenders are more likely to approve a loan or provide more favorable terms, such as lower interest rates.

²¹⁸ *Id.* at 25.

²¹⁹ *Id.* at 29.

²²⁰ *Id.*

²²¹ *Id.*

²²² See GAO-21-399T, Stmt. on the Record to the Subcomm. on Oversight & Investigations, Comm. on Fin. Servs. of the House of Representatives, *Financial Services: Fair Lending, Access, and Retirement Security*, (Feb. 2021), <https://perma.cc/P6R9-6UQG>.

4. *Borrower discouragement and distrust of USDA*

Additional data provided by USDA strongly suggest that a history of discrimination in the agency's farm loan programs has fostered distrust among minority borrowers and discouraged them from seeking farm loans from USDA. In other words, another cyclical effect of historic discrimination at USDA is that minority farmers have become "discouraged borrowers."

Substantial economic literature has described the prevalence of "discouraged borrowers." Discouraged borrowers are those who need credit, and would likely obtain credit if sought, but do not pursue credit opportunities because of the expectation of being denied.²²³ In small business finance literature it has also been observed that Black businesses apply for loans less often than white businesses largely because they expect to be denied credit, even when they have a good credit history and even in settings where strong local banks favor new business development.²²⁴ There is evidence of this in other areas of the economy as well, such as a lower level of

²²³ See, e.g., Mark Freel, Sara Carter, Stephen Tagg, & Colin Mason, *Small Business Economics, The Latent Demand for Bank Debt: Characterizing "Discouraged Borrowers,"* 38 *399-412* (2012), <https://link.springer.com/content/pdf/10.1007/s11187-010-9283-6.pdf>; Timothy Bates & Alicia Robb, *Economic Development Quarterly, Impacts of Owner Race and Geographic Context on Access to Small-Business Financing* (2015), <https://perma.cc/8XXF-Z74N>.

²²⁴ David Blanchflower, Phillip Levine, and David Zimmerman, "Discrimination in the small business credit market," *Review of Economics and Statistics*, November, 85(4), pp. 930-943 (2003), <https://perma.cc/C3GQ-DNRQ>; Cavalluzzo, Ken and John Wolken, "Small Business Loan Turndowns, Personal Wealth and Discrimination," *Journal of Business*, 78(6): 2153-2177 (2005), <https://www.jstor.org/stable/pdf/10.1086/497045.pdf?refreqid=excelsior%3A41a388781bd663cb4608712d7aa94987>; Rebel A. Cole, *Credit Scores and Credit Market Outcomes: Evidence from the Survey of Small Business Finances and the Kauffman Firm Survey* (2014); U.S. Small Business Administration Report, Washington, D.C.; Robert Fairlie, Alicia Robb, and David Robinson, "Black and White: Access to Capital Among Minority-Owned Startups," *Management Science* (2020), <https://doi.org/10.1287/mnsc.2021.3998>; Alicia Robb, Brett Barkley, and Mels de Zeeuw "Mind the Gap: How Do Credit Market Experiences and Borrowing Patterns Differ for Minority-Owned Firms?" (2018), <https://perma.cc/4LQE-KLZT>.

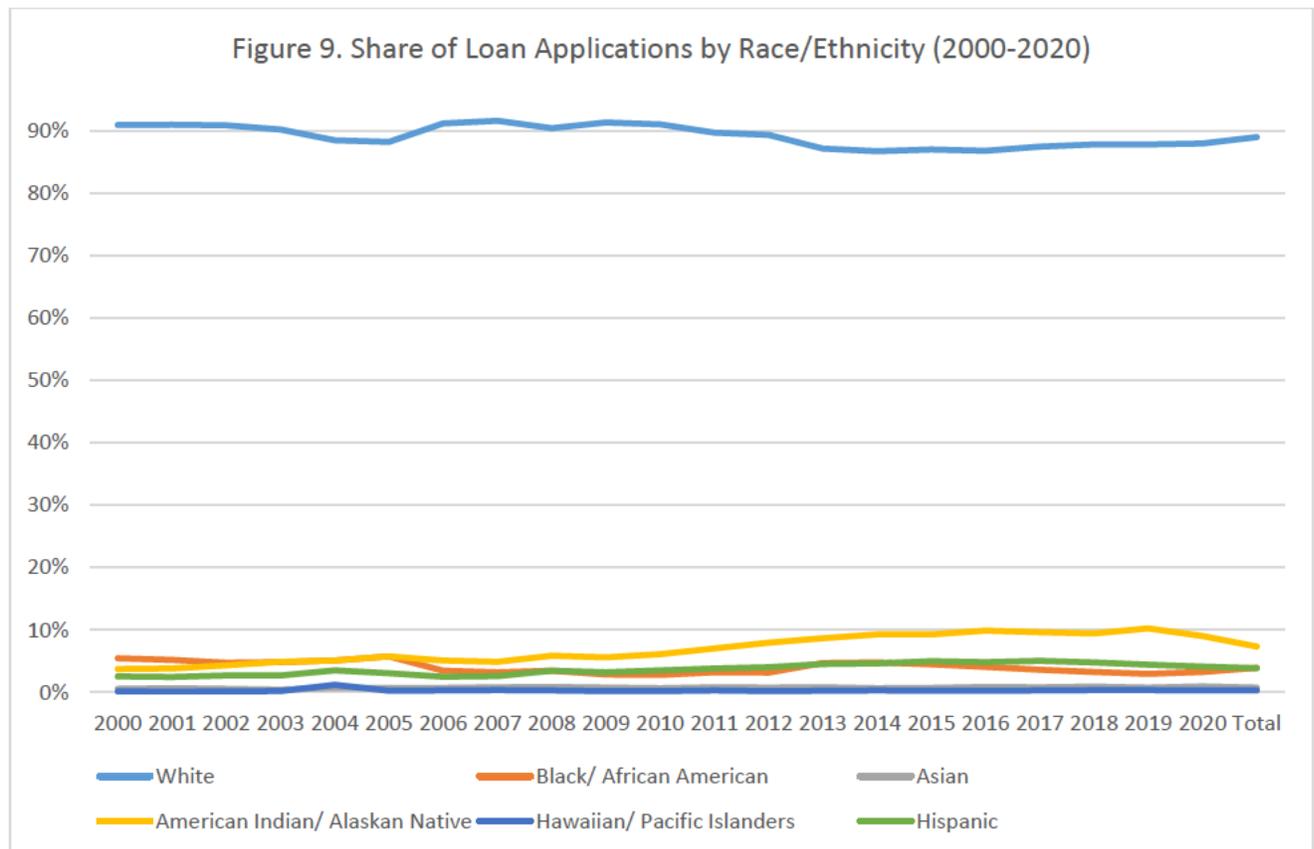
participation in government assistance programs by minorities.²²⁵ Past personal experience, or expectations derived from the experience of others, can cause wide discouragement among particular groups. Thus, although the data cannot establish the specific reason for an application's withdrawal, certain trends in the data—including lower application submission rates and higher application withdrawal rates—may support the conclusion that there are large numbers of discouraged borrowers, especially when considered alongside other anecdotal and statistical evidence of past discrimination.

To assess whether minorities are discouraged borrowers when it comes to USDA farm loan programs, I received direct loan application data from USDA for the years 2000-2020. I used these data to calculate the share of application submission and withdrawal rates for the various racial and ethnic groups of applicants, which can be found in the tables and figures below. The data provided by USDA, together with the documented history of discrimination against minority groups, strongly suggest that at least some minority farmers are discouraged borrowers who either do not apply for credit when needed or whose applications are withdrawn on the assumption that their applications will be denied.

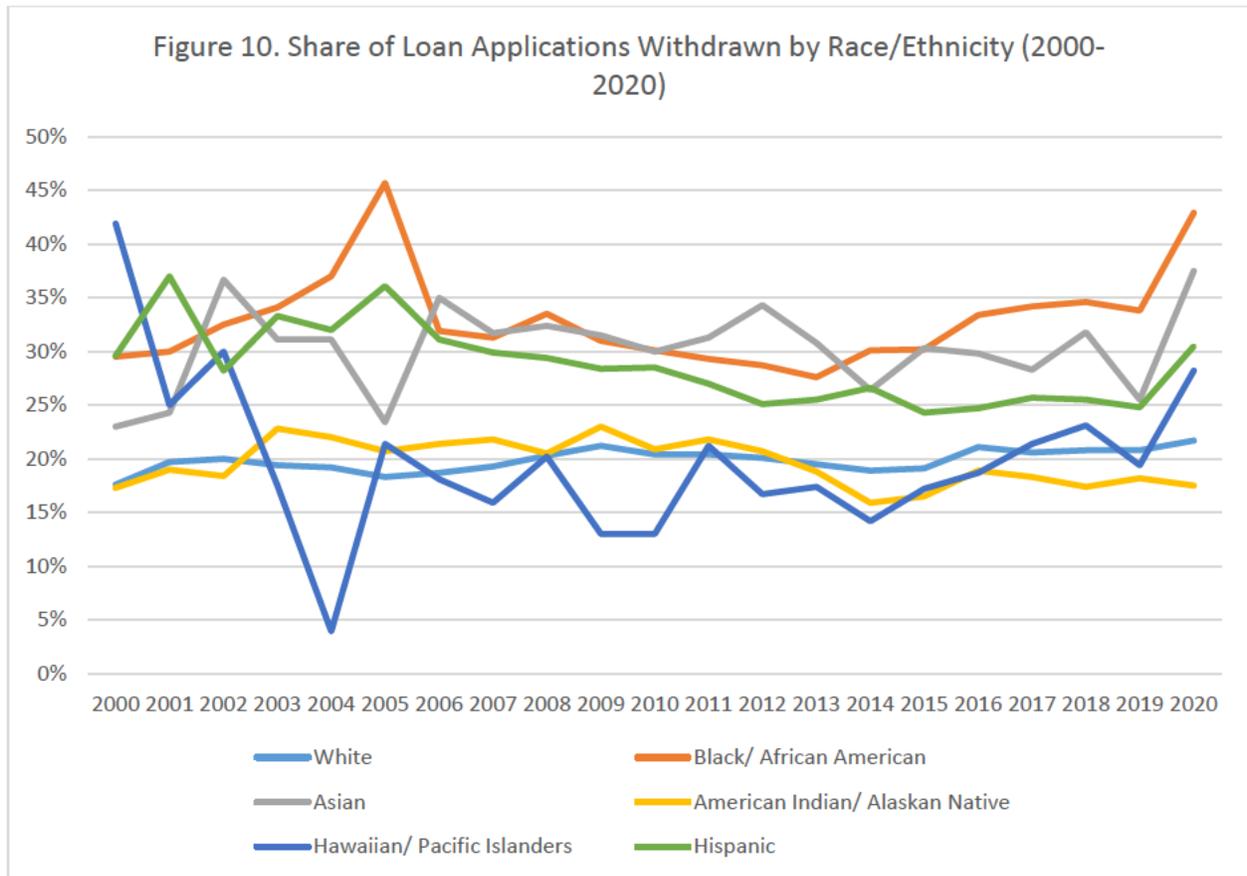
First, looking to application rates among the various racial groups, the data show a lower share of applicants by minority farmers than would be expected given their historical disadvantage in credit markets and USDA's position as the lender of last resort. Almost every minority group constituted well below 10% of USDA loan applicants. American Indians/Alaskan Natives are the highest percentage of minority applicants, but they are still an exceedingly small share of applicants overall, hovering around the 10% range. White farmers, on the other hand, made up

²²⁵ Elira Kuka & Bryan Stuart, Nat'l Bureau of Economic Rsch., Racial Inequality in Unemployment Insurance Receipt and Take-Up, https://www.nber.org/system/files/working_papers/w29595/w29595.pdf

around 90% of the loan applicants over the period from 2000-2020. More detail can be found at Table 7 in Appendix C.



Additionally, the data generally show higher application withdrawal rates among minorities as compared to white farmers. Overall, Blacks, Asians, and Hispanics had much higher rates of loan application withdrawals, compared with white farmers. Applications from American Indians and Alaskan Natives were withdrawn at higher rates than white farmers in every year over the period 2003-2011, although their withdrawal rates apparently decline after that year. There were so few Native Hawaiian and Pacific Islander applicants that there was no clear pattern that emerged over the period; in some years their withdrawal rate exceeded that of whites, while in other years it did not. More detail can be found at Table 8 in Appendix C.



The difference in application withdrawal rates between minorities and non-minorities is not likely explained by race-neutral factors such as low credit score. USDA provided me with additional data in the form of a credit risk assessment number for applicants for direct loans. The credit risk assessment is a number that takes on a value from 1 (being the lowest, or best, credit risk) to 4 (being the highest, or worst, credit risk). Table 22 presents the credit risk assessment of applicants by race and ethnicity and the outcome of their loan application (approved, withdrawn, or rejected). It shows that the applicants whose applications were withdrawn generally did not have the worst credit assessments. To help understand differences that might drive different outcomes, I compared credit risk assessments by outcome within each group.

In general, withdrawn applications had credit assessments that fell somewhere in between the credit assessments of approved and rejected applications.²²⁶ This provides evidence that at least some minority borrowers' applications were likely withdrawn because they expected their applications to be denied due to distrust fostered by historic discrimination at USDA and not due to having poor credit.

Table 22. Credit Risk Assessment by Race/Ethnicity (2000-2020)

	White	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic
All Applications	2.63	2.94	2.63	2.76	2.76	2.52
Standard Error	0.904	0.867	0.906	0.867	0.901	0.932
Sample Size	180856	7345	1206	17226	440	6321
Approved	2.62	2.91	2.60	2.75	2.80	2.51
Standard Error	0.9	0.868	0.893	0.864	0.896	0.918
Sample Size	150244	5333	930	14298	373	4675
Withdrawn	2.66	2.98	2.71	2.83	2.55	2.50
Standard Error	0.917	0.855	0.951	0.872	0.921	0.952
Sample Size	24573	1395	219	2387	58	1262
Rejected	2.80	3.03	2.80	2.76	2.56	2.65
Standard Error	0.922	0.878	0.903	0.903	0.882	1.033
Sample Size	5990	614	56	537	9	383
Diff b/n approved and withdrawn	-0.041	-0.064	-0.110	-0.080	0.244	0.008
As a % of Approved Credit Score	-1.6%	-2.2%	-4.2%	-2.9%	8.7%	0.3%
Diff b/n rejected and withdrawn	0.136	0.056	0.096	-0.068	0.004	0.147
As a % of Rejected Credit Score	4.9%	1.8%	3.4%	-2.5%	0.2%	5.6%

Source: USDA Direct Loan Application Data 2000-2020

Instead, other evidence supports the conclusion that minorities have lower application submission rates and higher withdrawal rates because lack of trust and borrower discouragement

²²⁶ There are two exceptions. First, for Native Hawaiian/Pacific Islander farmers, the mean credit risk assessment for both withdrawn and rejected applications and was actually *better* than for approved applications. However, the sample size for this group was very small. Second, for AI/AN farmers, the mean credit risk assessment for withdrawn applications was worse than both rejected and approved applications.

due to past discrimination in USDA farm loan programs. As mentioned earlier in the report, there are myriad anecdotal accounts of discrimination against minority farmers in USDA loan programs, including allegations that USDA officials did not provide the same levels of assistance to minority farmers in completing their loan applications, including:

- USDA denying minority farmers' loan applications at higher rates, arbitrarily, and sometimes without explanation;
- Minority farmers receiving USDA loans that were smaller, on less favorable terms, arriving too late to be useful for that year's operations, and/or with additional requirements not imposed on white farmers,
- Minority farmers receiving USDA loans and then having their loans arbitrarily reduced;
- USDA not informing minority farmers of loan servicing options or providing the same levels of loan servicing to minority farmers

It is likely that these discriminatory actions over generations created a lack of trust in USDA by minority farmers. Indeed, multiple reports, including a 2019 GAO report, have noted that “historical discrimination has led generations of SDFRs to distrust institutional lenders, making them less likely to apply for credit.”²²⁷ This type of “learned distrust” of USDA loan programs is another cyclical effect of prior discrimination at USDA that keeps minorities from seeking needed credit that may allow them the same opportunities as white farmers to enter into the business of farming and expand their farming operations.²²⁸

²²⁷ GAO-19-539 at 29.

²²⁸ Cocciarelli, S., Knox, R., Melone, B., Robinson, A., Larson, R., Godfrey-Smith, H. (2015). The CDFI-Farmer of Color Capital Access National Project. MSU Center for Regional Food Systems. https://www.canr.msu.edu/foodsystems/uploads/files/cdfi-foc_capital_access_final_report_formatted.pdf.

VIII. Conclusion

The fact that USDA has discriminated against minority farmers and ranchers in USDA farm loan programs has been demonstrated through ample evidence in numerous reports issued by the U.S. Commission on Civil Rights, the GAO, and the USDA OIG; as well other reports funded by the USDA itself, including the CRAT and Jackson Lewis reports; and in numerous lawsuits that have been settled and awarded damages to thousands of minority farmers to the tune of several billion dollars.

We see the lingering effects of this discrimination in the data from the most recent Census of Agriculture, which shows that minorities are underrepresented in farming and that, when they do farm, minority farms are generally smaller and less profitable than white farms along a number of metrics: acreage, market value of production sold, net income, and per-acre productivity. In turn, without the requisite collateral and creditworthiness, minority farmers have higher rates of delinquency and foreclosure, have more difficulty obtaining government funding as well as private credit, and are more likely to be discouraged borrowers. These adverse consequences are the direct result of the disadvantaged economic position of minority farmers. And that position is due in no small part to decades of discrimination in the lending programs that were supposed to aid and support them.

The debt relief provided in Section 1005 addresses those effects, including by increasing minority farmers' available capital to permit reinvestment in their farm operations, helping to ensure that minority farmers who have higher rates of delinquency and foreclosure do not lose their farms during a time of national distress, and focusing targeted relief on those groups that have been disproportionately left out of previous government funding. While this relief may not fully remedy the effects of USDA's past discrimination against minority farmers, it is an important step towards leveling the playing field for minority farmers going forward, and an intervention is

necessary to ensure that they do not continue to suffer the cyclical effects of prior discrimination in USDA's loan programs.

Dated: January 7, 2022

/s/ Alicia M. Robb

Alicia M. Robb, PhD

List of Appendices

- A. CV of Alicia Robb
- B. List of materials reviewed
- C. Additional Tables
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Appendix A: CV of Alicia Robb

Alicia M. Robb

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Education:

Ph.D. in Economics; University of North Carolina at Chapel Hill

Dissertation: "The Role of Race, Gender, and Discrimination in Business Survival"

Fields: Econometrics and Economic Development

M.S. in Economics; University of North Carolina at Chapel Hill

Thesis: "The Financial Systems Approach to Microfinance"

B.A. in Economics; Summa cum laude, St. Mary's University, San Antonio, TX

Experience:

Next Wave Impact

Founder and CEO: 2015-present

Designed and launched a learning by doing angel training program and investment fund in the United States in 2015-2016, bringing together nearly 100 women to make 10 seed stage investments over 12 months. Recruited investment team of nine women for the fund who were successful experienced angel investors that drove deal flow, lead due diligence, and recommended investments, as well as mentored 90 other women that were new and emerging angel investors who made up the rest of the fund members. Coordinated the education and training materials for the programs that became part of the public domain and freely available to everyone. Brought investment opportunities to the fund and helped to coordinate syndication with other angel groups. Supported similar efforts for a Europe program in 2015-2016. In 2017 launched a second fund focused on US impact companies following the same model: 99 women, 25 minorities, with an investment committee of 10. Completed investments in an initial portfolio of 15 companies, all led by women and people of color.

www.nextwaveimpact.com. As part of Next Wave Impact, conduct angel investor training and investor readiness training workshops around the globe.

Principal, Marin Economic Consulting/Robb Consulting; 2003-present

Small business and economic research; data analyses; report writing and review. Current and past clients include: Reveal Global Consulting, Facebook, United States Census Bureau, National Women's Business Council, Securities and Exchange Commission, Department of Justice, World Bank, Small Business Administration, United Nations Conference on Trade and Development, Minority Business Development Agency, Startup Genome, City of Chicago, Chicago Transit Authority, Wayne State University, Kauffman Foundation, Sage Foundation, Foundation for Sustainable Development, Rogers Family Coffee Company, Equator Coffees and Teas, and Beacon Economics.

Ewing Marion Kauffman Foundation

Senior Fellow: January 2013-December 2016

Senior Research Fellow: 2008-2013

Principal Investigator-Kauffman Firm Survey: 2006-2016

Principal Investigator for the Kauffman Firm Survey; Research on firm dynamics, entrepreneurial finance, and entrepreneurship by minorities and women; Organize conferences on entrepreneurship and entrepreneurial finance; Provide research support for entrepreneurship initiatives of the Foundation; Present research and data at academic conferences, workshops, and trainings.

Visiting Scholar: University of Colorado Boulder, 2014-present; Federal Reserve Bank of Atlanta, 2011-2013 & 2017-2019; University of California, Berkeley, 2013-2017; Basque Institute for Competitiveness, San Sebastian, 2012-2014; University of California, Santa Cruz: 2004-2014

Research topics including entrepreneurial finance, crowdfunding, women's entrepreneurship, minority entrepreneurship, firm performance, discrimination in lending, federal procurement, community development, and intergenerational links in self-employment. Write journal articles, book chapters, books, and reports.

Founder and Executive Director, Foundation for Sustainable Development; 1995-2006

Directed a non-profit 501(c)(3) organization that supports sustainable development initiatives in Latin America, Africa, and Asia; developed and coordinated international programs for university students and professionals; developed and managed budget; managed eleven staff and seven fellows in the United States and abroad; managed international grant programs and fundraising efforts; wrote grant proposals and reported on program activities.

Adjunct Professor, University of San Francisco, St. Mary's College and St. Mary's University; 2003-2007

Taught three week graduate and undergraduate travel courses in economic development during summer break and January term. Taught undergraduate courses in economic development, the global economy, and contemporary issues in economics.

Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System; 2000-2003

Worked on all aspects of the Survey of Small Business Finances, a survey conducted by the Board every five years, including: survey development, data evaluation, research, and presentations to the Board of Governors and Board staff, as well as at academic conferences; researched issues related to small business finances, women- and minority-owned businesses, entrepreneurship, and microfinance; prepared briefings, presentations, and content for governors' speeches.

Adjunct Professor, George Washington University; 2002

Taught Survey of Economic Development (Econ250), a graduate economics class joint with the Elliot School of International Affairs/Economic Department.

Economist, Office of Economic Research, U.S. SBA; 1998- 2000

Researched issues related to small business. Prepared written reports, presented at academic conferences, answered questions from the public, Congress, and media. Research included: small business' contribution to net job growth, women and minority-owned businesses, and the role of race and gender in firm survival.

Research Assistant/Instructor/Teaching Assistant, UNC, Chapel Hill; 1995-1998

Assisted professors with research and administration, including web design and maintenance; Instructed summer class in Principles of Economics; Assisted professors with semester classes in Principles of Economics, taught recitation classes, graded homework, quizzes, and exams.

Consultant, World Bank; Nicaragua; Summer 1997

Adapted and translated microfinance sustainability manual and software for Latin American market; field-tested manual and software with microfinance organizations in Nicaragua; provided technical assistance.

iv. ILAS/Tinker Foundation Research Grant; Nicaragua; Summer 1997

Researched informal credit markets, NGO loan funds, and the financial sustainability of microfinance programs in Nicaragua; surveyed many microcredit programs; interviewed loan fund managers; analyzed loan portfolios; estimated credit risks; provided technical assistance.

v. ILAS/Tinker Foundation Research Grant; Honduras; Summer 1996

Researched informal credit markets and NGO loan funds in Honduras; surveyed microcredit programs; interviewed loan fund managers; provided technical assistance.

Project Director, Farmer to Farmer/Partners of the Americas; Nicaragua; Summer 1995

Designed and implemented a Women in Development project funded by USAID; Provided technical assistance to a women's cooperative in rural Nicaragua in order to improve the efficiency of their herb production, marketing, and distribution methods.

Staff Economist, Christensen Associates; Madison, WI; 1994-1995

Estimated price indices, inflation factors, costs, and volumes for various projects; conducted productivity studies; calculated annual and quarterly data; performed regression analyses; managed databases.

Publications and Working Papers

Books

Coleman, Susan and Alicia Robb (2016). The Next Wave: Financing Women's Growth-Oriented Firms (Stanford University Press).

Robb, Alicia, Alexandria Valerio, and Brent Barton, eds. (2014). Entrepreneurship Education and Training: Insights from Ghana, Kenya, and Mozambique. (World Bank Publications).

Valerio, Alexandria, Brent Parton, and Alicia Robb (2014). Entrepreneurship Education and Training Programs around the World: Dimensions for Success (World Bank Publications).

Farhat, Joseph and Alicia Robb (2014). Applied Survey Data Analysis Using Stata: The Kauffman Firm Survey Data. Available at SSRN: <http://ssrn.com/>

Coleman, Susan and Alicia Robb (2012). A Rising Tide: Financing Strategies for Women-Owned Firms (Stanford University Press).

Fairlie, Robert and Alicia Robb (2008). Race, Families and Business Success: African-American, Asian-, and White-Owned Businesses (Cambridge: M.I.T. Press) (Choice, Outstanding Economic Title, 2009)

Articles

Hadar Gafni, Dan Marom, Alicia Robb, Orly Sade, Gender Dynamics in Crowdfunding (Kickstarter): Evidence on Entrepreneurs, Backers, and Taste-Based Discrimination, *Review of Finance*, December 2020. <https://doi.org/10.1093/rof/rfaa041>

Fairlie, Robert W. and Robb, Alicia and Robinson, David T., Black and White: Access to Capital Among Minority-Owned Startups. *Management Science*, Published online in Articles in Advance 29 Nov 2020.

Robb, Alicia, and David T. Robinson. "Testing for racial bias in business credit scores." *Small Business Economics*: Volume 50, Issue 3, pp 429-443, March 2018.

Farhat, Joseph, Sharon Matusik, Alicia Robb, and David T. Robinson. "New directions in entrepreneurship research with the Kauffman Firm Survey." *Small Business Economics*, Volume 50, Issue 3, pp 521-532, March 2018.

Farhat, Joseph, and Alicia Robb. "Analyzing complex survey data: the Kauffman Firm Survey." *Small Business Economics*. Volume 50, Issue 3, pp 657-670, March 2018

Coleman, Susan, and Alicia Robb, "Linking Women's Growth-Oriented Entrepreneurship Policy and Practice: Results from the Rising Tide Angel Training Program." *Venture Capital: An International Journal of Entrepreneurial Finance*, Volume 20, Issue 2, April 2018.

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- Business Financing,” *Economic Development Quarterly*. Vol. 30(2) 159-170. May 2016.
- Mollick, Ethan, and Alicia Robb. “Democratizing Innovation and Capital Access: The Role of Crowdfunding.” *California Management Review*, Vol. 58, No. 2. February 2016.
- Bates, Timothy, and Alicia Robb. "Has the Community Reinvestment Act increased loan availability among small businesses operating in minority neighbourhoods?." *Urban Studies* (2014).
- Robb, Alicia and Robert Seamans, “The Role of R&D in Entrepreneurial Finance and Performance,” *Advances in Strategic Management*, Volume 31, 341-373 (2014).
- Bates, Timothy and Alicia Robb, “Small-Business Viability in America's Urban Minority Communities”, *Urban Studies*, Vol. 51(13) 2844–2862 (2014).
- Robb, Alicia and David Robinson, “The Capital Structure Decisions of New Firms.” *Review of Financial Studies*, Vol 27, No 1 (2014).
- Bates, Timothy and Alicia Robb, "Greater Access to Capital is Needed to Unleash the Local Economic Development Potential of Minority-Owned Businesses", *Economic Development Quarterly*. Volume 27, Issue 3, August 2013, pp. 250–259.
- Robb, Alicia and John Watson, “Gender Differences in Firm Performance: Evidence from New Ventures in the United States,” *Journal of Business Venturing*. Volume 27, Issue 5, September 2012, 544–558.
- Coleman, Susan and Alicia Robb, “Unlocking Innovation in Women-Owned Firms: Strategies for Educating the Next Generation of Women Entrepreneurs,” *Journal of Women's Entrepreneurship and Education* (2012, No. 1-2, 99-125)
- Coleman, Susan and Alicia Robb, "Capital structure theory and new technology firms: is there a match?", *Management Research Review*, Vol. 35 Issue 2, 2012.
- Coleman, Susan and Alicia Robb, “Financing Strategies of New Technology-Based Firms,” *Review of Economics & Finance*. May 2011.
- Coleman, Susan and Alicia Robb, “Financing Strategies of New Technology-Based Firms: A Comparison of Women-and Men-Owned Firms,” *Journal of Technology Management and Innovation*, Volume 5, Issue 1, 2010.
- Doms, Mark, Ethan Lewis, and Alicia Robb, “Local Labor Market Education, New Business Characteristics, and Firm Performance,” *Journal of Urban Economics*, Volume 67 (2010) 61–77.
- Robb, Alicia M. and John Watson. "Comparing the Performance of Female- and Male-Controlled SMEs: Evidence from the United States and Australia." *Frontiers of Entrepreneurship Research* 30, no. 8 (2010).
- Coleman, Susan and Alicia Robb, “Sources of Financing for New Women-Owned Firms: Evidence from the Kauffman Firm Survey,” *Small Business Economics*, Volume 33 (4), December 2009.
- Fairlie, Robert and Alicia Robb, “Why do Female-Owned Businesses have Lower Survival Rates, Profits, Employment, and Sales, than Male-Owned Businesses?,” *Small Business Economics*, Volume 33 (4), December 2009.
- Robb, Alicia M. "Race, Ethnicity, and Gender: An Investigation of New Firm Performance." *Frontiers of Entrepreneurship Research* 28, no. 9 (2008): article 3.
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- Robb, Alicia and Robert Fairlie, "Access to Financial Capital among U.S. Businesses: The Case of African American Firms," *Annals of the American Academy of Political and Social Science*, Volume 613, September 2007.
- Fairlie, Robert and Alicia Robb, "Why Are Black-Owned Businesses Less Successful than White-Owned Businesses: The Role of Families, Inheritances, and Business Human Capital," *Journal of Labor Economics*, Volume 25, Number 2, April 2007.
- Fairlie, Robert and Alicia Robb, "Families, Human Capital, and Small Businesses: Evidence from the Characteristics of Business Owners Survey" *Industrial and Labor Relations Review*, Volume 60, Number 2, January 2007. (Emerald Citation of Excellence Award 2011)
- Robb, Alicia, "Entrepreneurship: A Path for Economic Advancement for Women and Minorities?," *Journal of Developmental Entrepreneurship*, Volume 7, Number 4, December 2002.
- Robb, Alicia, "Small Business Financing: Differences between Young and Old Firms," *Journal of Entrepreneurial Finance and Business Ventures*, Volume 1, Issue 2, December 2002.
- Bitler, Marianne, Alicia Robb, and John Wolken. "Financial Services Used by Small Businesses: Evidence from the 1998 Survey of Small Business Finances" *Federal Reserve Bulletin*, Vol. 87, April 2001.

Book chapters

- Coleman, Susan and Alicia Robb, "Reducing the gender gap in angel investing: the Rising Tide Program" in Albert N. Link (ed), *Gender and Entrepreneurial Activity*, Cheltenham, UK and Northampton, MA, USA. Edward Elgar Publishing (2017).
- Coleman, Susan and Alicia Robb, "Financing High-Growth Women-Owned Enterprises: Evidence from the United States" in Díaz-García, C. Brush, C., Gatewood, E. and Welter, F. (eds), *Women's Entrepreneurship in Global and Local Contexts*, Cheltenham, UK and Northampton, MA, USA. Edward Elgar Publishing (2016).
- Coleman, Susan and Alicia Robb, "Gender Differences in Innovation among US Entrepreneurs," in Lewis, Hendry, Gatewood, and Watson, editors, *Women's Entrepreneurship in the 21st Century: An International Multi-Level Research Analysis*. Edward Elgar Publishing (2014).
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- Coleman, Susan and Alicia Robb, "Financing by Women-Owned Firms," in Douglas Cumming (editor), the *Oxford Handbook of Entrepreneurial Finance*. Oxford University Press (2011).
- Fairlie, Robert and Alicia Robb, "Financial Capital among Minority-Owned Businesses," in Douglas Cumming (editor), the *Oxford Handbook of Entrepreneurial Finance* (2011).
- Coleman, Susan and Alicia Robb, "Sources of Financing for New Technology Firms: Evidence from the Kauffman Firm Survey," in G. Calcagnini, I. Favaretto (eds.), *The Economics of Small Businesses: An International Perspective*. Springer (2011).
- Reynolds, Paul and Alicia Robb, "The PSED II and the Kauffman Firm Survey," in Paul Reynolds and Richard Curtin, editors, *New Firm Creation in the United States: Initial Explorations with the PSED II Data Set* (2009).
- Bates, Timothy and Alicia Robb, "Crime's Impact on the Viability of Young Urban Small Businesses" in *Reengineering Community Development for the 21st Century* (2008).

Bates, Timothy and Alicia Robb. "Revitalizing Inner-City Minority Communities by Creating and Expanding Small Businesses," in Enterprise and Deprivation: Small Business, Social Exclusion, and Sustainable Communities", ed. Alan Southern. London: Routledge (2008).

Fairlie, Robert and Alicia Robb. "Families, Human Capital, and Small Business: Evidence from the Characteristics of Business Owners Survey," in Entrepreneurship and Human Capital, ed. Mirjam van Praag, Amsterdam: Amsterdam Center for Entrepreneurship. (2006).

Robb, Alicia, "New Data for Dynamic Analysis: The Longitudinal Establishment and Enterprise Microdata (LEEM)," in Jerome Katz, ed., Advances in Entrepreneurship, Firm Emergence and Growth, Volume 4. Greenwich CT: JAI Press. (2000).

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Robb, A., Barkley, B. and de Zeeuw, M, 2018. "Mind the Gap: How Do Credit Market Experiences and Borrowing Patterns Differ for Minority-Owned Firms?" Federal Reserve Bank of Atlanta.

Robb, Alicia and John Wolken, "Firm, Owner, and Financing Characteristics: Differences between Female- and Male-owned Small Businesses" Federal Reserve Working Paper Series: 2002-18.

Acs, Zoltan, Catherine Armington, and Alicia Robb, 1999, "Measuring Job Flow Dynamics in the U.S. Economy," Center for Economic Studies, U.S. Bureau of the Census, CES Discussion Paper 99-1.

Headd, Brian, and Alicia Robb, "Characteristics of Small Business Owners and Employees," in the State of Small Business 1999, Office of Advocacy, U.S. Small Business Administration.

Robb, Alicia, 1999. "Minorities in Business," Office of Advocacy, U.S. SBA, Washington, D.C.

Alicia Robb, "New Data for Analysis of Small Business Job Creation," in the *State of Small Business 1998*, U.S. Small Business Administration, Office of Advocacy.

Robb, Alicia, 1998. "Women in Business," Office of Advocacy, U.S. SBA, Washington, D.C.

Other Activities:

Board of Directors, Kachuwa Impact Fund (2020-present)
Board of Directors, Deming Center Venture Fund (2015-present)
Board of Directors, Next Wave Foundation (2017-present)
Committee Member, Angel Capital Association Summit, Impact Track Lead (2018-present)
Advisory Board, Good Food Institute (2016-2021)
National Advisory Council for Global Entrepreneurship Week (2013-2017)
Visiting Scholar, University of California, Berkeley (2013-2017)
Visiting Scholar, University of Colorado, Boulder (2014-present)
Visiting Scholar, Federal Reserve Bank of Atlanta (2010- 2013; 2017-2019)
National Advisory Council for Minority Business Enterprise (2011-2014)
Member, OECD Pilot Scoreboard on SME Financing (2009-2011)
Member, G20 Working Group on SME Financing (2009-2011)

Reviewer for journals such as *Management Science*, *Journal of Labor Economics*, *Journal of Business Venturing*, *Entrepreneurship Theory & Practice*, *Small Business Economics*, and *Journal of Economics and Management Strategy*, *Economics of Innovation and New Technology*, and Expert Reviewer of proposals for groups such as the National Science Foundation and the Center for Economic Studies, U.S. Census Bureau.

Work cited in publications such as the *Economist*, *Wall Street Journal*, *New York Times*, Inc. Magazine, *Washington Post*, *Business Week*, *CNNMoney.com*, *Forbes*, *Boston Globe*, *Christian Science Monitor*, *Independent Banker*, and *Huffington Post*.

Appendix B: Reports, Audits, and Other Documents that were reviewed

- A. Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture: U.S. Commission on Civil Rights, 1965
- B. Civil Rights Under Federal Programs: An Analysis of Title IV of the Civil Rights Act of 1964, A Report of the U.S. Commission on Civil Rights, 1968
- C. Federal Civil Rights Enforcement Effort, US Commission on Civil Rights, 1970
- D. The Decline of Black Farming in America: A Report of the United States Commission on Civil Rights, February 1982
- E. Information on Agricultural Credit Provided to Indians on 14 Reservations, GAO, 1987
- F. Hearing on the Decline of Minority Farmers in the US, Committee on Government Operations, US House of Representatives, 1990
- G. 1997 Report: Civil Rights at the United States Department of Agriculture, A Report by the Civil Rights Action Team (CRAT Report), February 1997.
- H. Evaluation Report on Civil Rights Issues — Phase I, Report No. 50801-2-Hq(1), dated February 27, 1997
- I. Minority Participation in Farm Service Agency’s Farm Loan Programs — Phase II, Report No. 50801-3-Hq, dated September 29, 1997.
- J. Implementation of OIG’s Recommendations — Department’s Civil Rights Complaint System and the Direct Farm Loan Program: Evaluation Report No. 50801-5-Hq March 1998
- K. A Qualitative Study of Civil Rights Implications in Farm Loan Program Administration: Perceptions and Vulnerabilities, 1998.
- L. “Civil Rights at the United States Department of Agriculture: One Year of Change” Prepared by the Civil Rights Implementation Team (CRIT): CRIT Report (March, 1998)
- M. 1998 USDA National Commission on Small Farms
- N. Lawsuits dealing with USDA discrimination against minority farmers (Pigford, Pigford II, Keepseagle, and Garcia)
- O. Audit Report No. 60801-03-Hq, Office of Civil Rights Management of EEO complaints, issued March 2000
- P. Audit Report: Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints. Audit Report No. 60801-4-Hq, March 2000
- Q. Dispossession (Book)
- R. 2005 OIG Audit: Audit Report: Minority Participation in Farm Service Agency’s Programs, Report No. 03601-11-AT, November 2005
- S. Farm Service Agency Direct Loan Program Effectiveness Study, University of Arkansas, June 2005

- T. Lending on Native American Lands: A Guide for Rural Development Staff (June 2006)
- U. USDA OIG Northeast Region, Audit Report, “Review of the U.S. Department of Agriculture’s Accountability for Actions Taken on Civil Rights Complaints,” (May 2007)
- V. Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights, October 2008, GAO-09-62
- W. Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention. May 2008, GAO-08-755T
- X. Hearing Before The Subcommittee on Government Management, Organization, & Procurement of the Committee on Oversight & Government Reform House of Representatives 110th Congress Second Session May 14, 2008 Serial No. 110–137
- Y. USDA OIG Southwest Region, Audit Report, “Farm Service Agency, Socially Disadvantaged Borrower Foreclosures—Farm Program Loans” (June 2009)
- Z. Jackson-Lewis—Independent Assessment of the Delivery of Technical and Financial Assistance, Contract AG-3142-C-09-0049, Civil Rights Assessment, March 31, 2011
- AA. Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case, February 2013.
- BB. 2019 GAO Report: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited, July, 2019, GAO-19-539
- CC. INDIAN ISSUES Agricultural Credit Needs and Barriers to Lending on Tribal Lands. May 2019, GAO-19-464
- DD. Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021
- EE. Congressional Record, March 5, 2021, Testimony for Section 1005, 167 Cong. Rec. S1264
- FF. Decennial Census conducted by the U.S. Census Bureau (1920-2020)
- GG. Census of Agriculture conducted by the USDA (1920-2017)
- HH. Allen R. Thompson & Michael Green, USDA, ESS Staff Report, NRED 80-4, The Status of Minority Farms in the United States, (“1974 Rep.”)
- II. Charles Dodson & Steven Koenig, *Evaluating the relative cost effectiveness of the Farm Service Agency’s farm loan programs*, USDA FSA Report to Congress (August 2006) (“Dodson & Koenig 2006”), available at <https://perma.cc/HNT2-BNCV>
- JJ. Cong. Rsch. Serv. (“CRS”), *Agricultural Credit: Institutions and Issues*, R-46768 (April 21, 2021)
- KK. GAO-21-399T, Stmt. On the Record to the Subcomm. On Oversight & Investigations,
- LL. Comm. On Fin. Servs. Of the House of Representatives, *Financial Services: Fair Lending, Access, and Retirement Security*, (Feb. 2021), <https://perma.cc/P6R9-6UQG>
- MM. House Ag. Comm. Hr’g on USDA Oversight (July 22, 2015)

- NN. Hr'g on Mgmt. of Civil Rights at the USDA before the House Subcomm. On Gov't Mgmt., Org., & Procurement, Comm. On Oversight and Gov't Reform, 110th Cong. (2008), ("2008 Senate Ag. Hr'g")
- OO. Hr'g on the USDA's Civil Rights Prog. For Farm Prog. Participants before House Subcomm., Dep't Ops., Oversight, Nutrition, and Forestry, Comm. on Ag., 107th Cong. 23, (2002) (2002 Civil Rights Hr'g)
- PP. James MacDonald, Robert Hoppe, & Doris Newton, USDA, Three Decades of Consolidation in U.S. Agriculture, EIB-189 (March 2018), <https://perma.cc/XZ6R-XZVN>
- QQ. Jon Wainwright & Collette Holt, Transportation Research Board, *Guidelines for Conducting a Disparity & Availability Study for the Federal DBE Program*, Rep. 644 (2010), <https://perma.cc/CFY4-AWA9>
- RR. Kauffman Firm Survey, which tracked firms over 2004-2011 period, by the Kauffman Foundation. Joseph Farhat & Alicia Robb, *Applied Survey Data Analysis Using Stata: The Kauffman Firm Survey Data*, (2014), <https://perma.cc/9KBU-HUG7>
- SS. Mark Freel, Sara Carter, Stephen Tagg, & Colin Mason, *Small Business Economics*, The Latent Demand for Bank Debt: Characterizing "Disorganized Borrowers," 38 399-412 (2012), <https://link.springer.com/content/pdf/10.1007/s11187-010-9283-6.pdf>
- TT. Report of Lynn A. Hayes, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-25 (Feb 20, 2009)
- UU. Report of William T. Bielby, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-51 (Feb 20, 2009)
- VV. Timothy Bates & Alicia Robb, *Economic Development Quarterly*, Impacts of Owner Race and Geographic Context on Access to Small-Business Financing (2015), <https://perma.cc/8XXF-Z74N>
- WW. USCCR, Ten-Year Check-Up: Have Federal Agencies Responded to Civil Right Recommendations, vol. III (June 12, 2003) ("USCCR 2003")
- XX. USDA, 2007 Census of Agriculture, <https://perma.cc/GD57-RF7R> at 3, Column: Every Voice Counts
- YY. *USDA Announces [CFAP]*, USDA (Apr. 17, 2020), <https://perma.cc/B7N9-PTRE>
- ZZ. USDA, Market Facilitation Program, <https://perma.cc/947S-7JCX>
- AAA. USDA-NASS, 2017 Race/Ethnicity/Gender Profile from the 2017 Census of Agriculture (NASS), <https://perma.cc/FPW3-VUMV>
- BBB. USDA-NASS Montana Field Off., U.S. American Indian Agriculture at a Glance, <https://perma.cc/HHB3-UFJ5>
- CCC. USDA, National Commission on Small Farms, A Time to Act (Jan. 1998) <https://perma.cc/NZY6-PPFW>
- DDD. USDA Direct Loan Data (2000-2010)

- EEE. Nathan Rosenberg, "Farmers Who Don't Farm: The Curious Rise of the Zero-Sales Farmer," *Journal of Agriculture, Food Systems, and Community Development*, October, 1-9, 2017, <https://perma.cc/AD8N-MX9M>
- FFF. ERS report, *Rural America at a Glance, 2018 Edition*, <https://perma.cc/C24E-QTQ8>
- GGG. ERS, What is Rural, <https://perma.cc/V3FT-NMM9>
- HHH. Elira Kuka & Bryan Stuart, Nat'l Bureau of Economic Rsch., Racial Inequality in Unemployment Insurance Receipt and Take-Up: https://www.nber.org/system/files/working_papers/w29595/w29595.pdf
- III. Susan Cocciarelli, Reggie Knox, Brett Melone, Ali Robinson, Rick Larson, Helen Godfrey-Smith, The CDFI-Farmer of Color Capital Access National Project. MSU Center for Regional Food Systems., (2015), <https://perma.cc/46T5-YZF5>
- JJJ. Paul Nightingale, & Alex Coad, Muppets and gazelles: political and methodological biases in entrepreneurship research, *Industrial & Corporate Change*, 23(1), 113-143 (2014), <https://perma.cc/C6AY-57G8>
- KKK. Gavin Cassar, "The financing of business start-ups," *Journal of Business Venturing* 19.2 (2004): 261-283, <https://perma.cc/FP3E-XCWK>
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Appendix C: Additional Tables

Table 1. Population by Race and Ethnicity (1940-2020)

	White	Black or African American	American Indian/Alaska Native	Asian, Native Hawaiian / Pacific Islander	Some Other Race	Two or more races	Hispanic	Total
1940	89.8	9.8			0.4			100.0
1950	89.5	10.0			0.5			100.0
1960	88.6	10.5			0.9			100.0
1970	87.5	11.1			1.4		4.5	100.0
1980	83.0	11.7	0.7	1.5	3.0		6.4	99.9
1990	80.3	12.1		2.9	3.9		9.0	99.2
2000	75.1	12.3	0.9	3.8	5.5	2.4	12.5	100.0
2010	72.4	12.6	0.9	5.0	6.2	2.9	16.3	100.0

Source: U.S. Census Bureau, Decennial Census of Population, 1940-2010

Table 2. Share of U.S. Farms Owned by Whites, Blacks and Other Race (Census of Agriculture 1920-2017)

	White	Black	Other	Total	White	Black	Other
1920	5,499,707	925,710	28,574	6,453,991	85.2%	14.3%	0.4%
1930	5,373,703	882,852	38,548	6,295,103	85.4%	14.0%	0.6%
1940	5,378,913	681,790	41,714	6,102,417	88.1%	11.2%	0.7%
1950	4,802,520	559,980	25,937	5,388,437	89.1%	10.4%	0.5%
1959	3,419,672	272,541	18,290	3,710,503	92.2%	7.3%	0.5%
1964	2,957,905	184,004	15,948	3,157,857	93.7%	5.8%	0.5%
1969	2,626,403	87,393	16,454	2,730,250	96.2%	3.2%	0.6%
1978	2,199,787	37,351	20,637	2,257,775	97.4%	1.7%	0.9%
1982	2,186,609	33,250	21,117	2,240,976	97.6%	1.5%	0.9%
1987	2,043,119	22,954	21,686	2,087,759	97.9%	1.1%	1.0%
1992	1,881,813	18,816	24,671	1,925,300	97.7%	1.0%	1.3%
1997	1,864,201	18,451	29,207	1,911,859	97.5%	1.0%	1.5%
2002	2,067,379	29,090	32,513	2,128,982	97.1%	1.4%	1.5%
2007	2,114,325	30,599	59,868	2,204,792	95.9%	1.4%	2.7%
2012	2,012,652	33,371	63,280	2,109,303	95.4%	1.6%	3.0%
2017	1,955,737	32,052	54,431	2,042,220	95.8%	1.6%	2.7%

Source: Census of Agriculture, 1920-2017

Table 3. Population Shares (Row) by State, Race, and Ethnicity, 2010

State	Hispanic or Latino	Black or African American alone	American Indian and Alaska Native alone	Asian alone	Native Hawaiian and Other Pacific Islander alone	Some Other Race alone	Two or More Races	White alone
Alabama	3.9%	26.2%	0.6%	1.1%	0.1%	2.0%	1.5%	68.5%
Alaska	5.5%	3.3%	14.8%	5.4%	1.0%	1.6%	7.3%	66.7%
Arizona	29.6%	4.1%	4.6%	2.8%	0.2%	11.9%	3.4%	73.0%
Arkansas	6.4%	15.4%	0.8%	1.2%	0.2%	3.4%	2.0%	77.0%
California	37.6%	6.2%	1.0%	13.0%	0.4%	17.0%	4.9%	57.6%
Colorado	20.7%	4.0%	1.1%	2.8%	0.1%	7.2%	3.4%	81.3%
Connecticut	13.4%	10.1%	0.3%	3.8%	0.0%	5.6%	2.6%	77.6%
Delaware	8.2%	21.4%	0.5%	3.2%	0.0%	3.4%	2.7%	68.9%
District of Columbia	9.1%	50.7%	0.3%	3.5%	0.1%	4.1%	2.9%	38.5%
Florida	22.5%	16.0%	0.4%	2.4%	0.1%	3.6%	2.5%	75.0%
Georgia	8.8%	30.5%	0.3%	3.2%	0.1%	4.0%	2.1%	59.7%
Hawaii	8.9%	1.6%	0.3%	38.6%	10.0%	1.2%	23.6%	24.7%
Idaho	11.2%	0.6%	1.4%	1.2%	0.1%	5.1%	2.5%	89.1%
Illinois	15.8%	14.5%	0.3%	4.6%	0.0%	6.7%	2.3%	71.5%
Indiana	6.0%	9.1%	0.3%	1.6%	0.0%	2.7%	2.0%	84.3%
Iowa	5.0%	2.9%	0.4%	1.7%	0.1%	1.8%	1.8%	91.3%
Kansas	10.5%	5.9%	1.0%	2.4%	0.1%	3.9%	3.0%	83.8%
Kentucky	3.1%	7.8%	0.2%	1.1%	0.1%	1.3%	1.7%	87.8%
Louisiana	4.2%	32.0%	0.7%	1.5%	0.0%	1.5%	1.6%	62.6%
Maine	1.3%	1.2%	0.6%	1.0%	0.0%	0.3%	1.6%	95.2%
Maryland	8.2%	29.4%	0.4%	5.5%	0.1%	3.6%	2.9%	58.2%
Massachusetts	9.6%	6.6%	0.3%	5.3%	0.0%	4.7%	2.6%	80.4%
Michigan	4.4%	14.2%	0.6%	2.4%	0.0%	1.5%	2.3%	78.9%
Minnesota	4.7%	5.2%	1.1%	4.0%	0.0%	1.9%	2.4%	85.3%
Mississippi	2.7%	37.0%	0.5%	0.9%	0.0%	1.3%	1.1%	59.1%
Missouri	3.5%	11.6%	0.5%	1.6%	0.1%	1.3%	2.1%	82.8%
Montana	2.9%	0.4%	6.3%	0.6%	0.1%	0.6%	2.5%	89.4%
Nebraska	9.2%	4.5%	1.0%	1.8%	0.1%	4.3%	2.2%	86.1%
Nevada	26.5%	8.1%	1.2%	7.2%	0.6%	12.0%	4.7%	66.2%
New Hampshire	2.8%	1.1%	0.2%	2.2%	0.0%	0.9%	1.6%	93.9%
New Jersey	17.7%	13.7%	0.3%	8.3%	0.0%	6.4%	2.7%	68.6%
New Mexico	46.3%	2.1%	9.4%	1.4%	0.1%	15.0%	3.7%	68.4%
New York	17.6%	15.9%	0.6%	7.3%	0.0%	7.4%	3.0%	65.7%
North Carolina	8.4%	21.5%	1.3%	2.2%	0.1%	4.3%	2.2%	68.5%
North Dakota	2.0%	1.2%	5.4%	1.0%	0.0%	0.5%	1.8%	90.0%
Ohio	3.1%	12.2%	0.2%	1.7%	0.0%	1.1%	2.1%	82.7%
Oklahoma	8.9%	7.4%	8.6%	1.7%	0.1%	4.1%	5.9%	72.2%
Oregon	11.7%	1.8%	1.4%	3.7%	0.3%	5.3%	3.8%	83.6%
Pennsylvania	5.7%	10.8%	0.2%	2.7%	0.0%	2.4%	1.9%	81.9%
Rhode Island	12.4%	5.7%	0.6%	2.9%	0.1%	6.0%	3.3%	81.4%
South Carolina	5.1%	27.9%	0.4%	1.3%	0.1%	2.5%	1.7%	66.2%
South Dakota	2.7%	1.3%	8.8%	0.9%	0.0%	0.9%	2.1%	85.9%
Tennessee	4.6%	16.7%	0.3%	1.4%	0.1%	2.2%	1.7%	77.6%
Texas	37.6%	11.8%	0.7%	3.8%	0.1%	10.5%	2.7%	70.4%
Utah	13.0%	1.1%	1.2%	2.0%	0.9%	6.0%	2.7%	86.1%
Vermont	1.5%	1.0%	0.4%	1.3%	0.0%	0.3%	1.7%	95.3%
Virginia	7.9%	19.4%	0.4%	5.5%	0.1%	3.2%	2.9%	68.6%
Washington	11.2%	3.6%	1.5%	7.2%	0.6%	5.2%	4.7%	77.3%
West Virginia	1.2%	3.4%	0.2%	0.7%	0.0%	0.3%	1.5%	93.9%
Wisconsin	5.9%	6.3%	1.0%	2.3%	0.0%	2.4%	1.8%	86.2%
Wyoming	8.9%	0.8%	2.4%	0.8%	0.1%	3.0%	2.2%	90.7%
Puerto Rico	99.0%	12.4%	0.5%	0.2%	0.0%	7.8%	3.3%	75.8%
Total	17.3%	12.6%	0.9%	4.7%	0.2%	6.2%	2.9%	72.4%

Source: 2010 Decennial Census.

Table 4. Top Five States by % of Farms by Race/Ethnicity, 2017		
	Farms	Land in farms (acres)
Farms with a Hispanic, Latino, or Spanish principal producer		
United States	77,416	26,041,600
States		
Texas	36.4%	27.2%
California	12.3%	8.2%
New Mexico	10.6%	20.6%
Florida	6.3%	1.9%
Colorado	3.6%	3.9%
Total for top five states:	69.1%	61.9%
Farms with an American Indian or Alaskan Native principal producer		
United States	39,632	51,095,994
States		
Arizona	29.2%	39.4%
Oklahoma	21.8%	4.4%
New Mexico	14.9%	14.3%
Texas	5.6%	1.2%
Montana	3.3%	9.1%
Total for top five states:	74.7%	68.3%
Farms with an Asian principal producer		
United States	13,904	1,831,229
States		
California	29.3%	34.9%
Hawaii	16.6%	10.1%
Texas	7.7%	7.1%
Florida	6.3%	3.6%
Washington	3.5%	3.4%
Total for top five states:	63.4%	59.1%
Farms with a Black or African American principal producer		
United States	32,052	3,862,936
States		
Texas	25.0%	24.5%
Mississippi	15.2%	15.2%
Alabama	9.1%	8.2%
Louisiana	6.8%	5.1%
Georgia	6.0%	5.7%
Total for top five states:	62.1%	58.7%
Farms with a Native Hawaiian or Other Pacific Islander principal producer		
United States	2,092	426,068
States		
Hawaii	36.9%	16.3%
California	14.6%	41.1%
Texas	6.1%	3.6%
Florida	3.8%	0.5%
Oregon	3.2%	0.9%
Total for top five states:	64.6%	62.4%
Farms with a white principal producer		
United States	1,955,737	843,497,615
States		
Texas	12.1%	14.9%
Missouri	4.8%	3.3%
Iowa	4.4%	3.6%
Ohio	4.0%	1.7%
Kentucky	3.8%	1.5%
Total for top five states:	29.1%	24.9%

Source: 2017 U.S. Census of Agriculture

Table 5. Distribution of farms and acreage by State, Race, and Ethnicity, 2017

Geographic area	Farms with an Hispanic, Latino, or Spanish principal producer		Farms with an American Indian or Alaska Native principal producer		Farms with an Asian principal producer		Farms with a Black or African American principal producer		Farms with a Native Hawaiian or Other Pacific Islander principal producer		Farms with a White principal producer	
	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)
United States	3.8%	2.9%	1.9%	5.7%	0.7%	0.2%	1.6%	0.4%	0.1%	0.0%	95.8%	93.7%
States												
Alabama	1.0%	0.8%	1.4%	0.8%	0.2%	0.1%	7.2%	3.7%	0.0%	0.0%	91.0%	95.2%
Alaska	2.5%	0.2%	4.4%	37.9%	0.6%	0.0%	0.5%	(D)	0.0%	0.0%	95.4%	62.3%
Arizona	5.2%	5.2%	60.6%	77.0%	0.4%	0.1%	0.2%	0.0%	0.2%	0.0%	38.8%	24.2%
Arkansas	1.8%	1.0%	1.0%	0.6%	0.8%	0.2%	2.4%	1.1%	0.0%	0.0%	95.6%	97.5%
California	13.5%	8.7%	1.5%	1.5%	5.8%	2.6%	0.4%	0.3%	0.4%	0.7%	92.5%	95.8%
Colorado	7.1%	3.2%	1.0%	2.9%	0.6%	0.2%	0.2%	0.0%	0.1%	0.1%	98.3%	96.9%
Connecticut	1.8%	0.8%	0.2%	0.2%	0.5%	0.2%	0.3%	0.1%	0.0%	(D)	99.0%	99.6%
Delaware	1.3%	0.4%	0.0%	(D)	1.4%	0.2%	0.8%	0.2%	0.0%	0.0%	97.7%	99.2%
Florida	10.2%	5.1%	0.9%	1.7%	1.8%	0.7%	3.2%	0.9%	0.2%	0.0%	94.1%	96.1%
Georgia	1.6%	1.0%	0.4%	0.3%	0.6%	0.2%	4.5%	2.2%	0.0%	0.0%	94.3%	97.1%
Hawaii	7.6%	4.3%	0.5%	0.3%	31.5%	16.3%	0.3%	0.0%	10.5%	6.1%	54.2%	68.1%
Idaho	3.5%	3.2%	0.7%	3.5%	0.3%	0.3%	0.0%	0.0%	0.1%	0.0%	98.9%	96.6%
Illinois	0.9%	0.7%	0.1%	0.0%	0.1%	0.1%	0.2%	0.1%	0.0%	0.0%	99.4%	99.7%
Indiana	1.0%	0.7%	0.2%	0.1%	0.1%	0.0%	0.2%	0.1%	0.0%	0.0%	99.5%	99.8%
Iowa	0.6%	0.6%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	99.8%	99.9%
Kansas	1.6%	1.1%	0.7%	0.4%	0.1%	0.1%	0.3%	0.1%	0.0%	0.0%	98.9%	99.3%
Kentucky	0.7%	0.4%	0.2%	0.1%	0.1%	0.1%	0.5%	0.3%	0.0%	0.0%	99.0%	99.4%
Louisiana	2.4%	2.0%	0.7%	0.5%	0.2%	0.1%	8.0%	2.5%	0.1%	0.0%	90.9%	96.8%
Maine	1.3%	0.6%	0.3%	(D)	0.4%	0.1%	1.7%	(D)	0.1%	0.0%	97.7%	99.4%
Maryland	1.6%	0.5%	0.3%	(D)	1.3%	0.3%	1.4%	0.4%	0.1%	(D)	96.7%	99.2%
Massachusetts	2.0%	1.8%	0.2%	(D)	0.8%	0.4%	1.8%	0.1%	0.1%	0.0%	96.9%	99.3%
Michigan	1.5%	0.7%	0.5%	0.4%	0.2%	0.1%	0.5%	0.1%	0.0%	0.0%	98.7%	99.3%
Minnesota	0.7%	0.9%	0.2%	0.2%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	99.4%	99.6%
Mississippi	1.2%	1.0%	0.3%	0.2%	0.2%	0.1%	14.0%	5.7%	0.1%	0.1%	85.4%	93.8%
Missouri	1.1%	0.7%	0.6%	0.3%	0.3%	0.1%	0.2%	0.1%	0.0%	0.0%	98.8%	99.3%
Montana	1.2%	1.7%	4.8%	8.0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.0%	95.1%	92.1%
Nebraska	0.8%	1.0%	0.1%	0.2%	0.1%	0.0%	0.0%	(D)	0.0%	0.0%	99.7%	99.6%
Nevada	6.0%	3.7%	6.2%	22.2%	0.5%	0.1%	0.3%	0.1%	0.0%	0.0%	93.6%	78.1%
New Hampshire	1.1%	0.7%	0.3%	(D)	0.3%	0.0%	0.9%	0.0%	0.0%	0.0%	98.2%	99.5%
New Jersey	3.3%	2.1%	0.2%	0.2%	1.5%	1.7%	0.6%	0.1%	0.0%	(D)	97.8%	98.1%
New Mexico	32.8%	13.2%	23.6%	18.0%	0.3%	0.1%	0.2%	0.1%	0.1%	0.0%	76.0%	82.3%
New York	1.2%	0.8%	0.3%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	0.0%	99.1%	99.5%
North Carolina	1.2%	0.9%	1.2%	1.0%	0.6%	0.2%	3.1%	2.0%	0.0%	0.0%	95.2%	96.8%
North Dakota	0.7%	0.5%	0.9%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	(D)	99.0%	99.1%
Ohio	0.9%	0.6%	0.2%	0.1%	0.2%	0.1%	0.2%	0.1%	0.0%	0.0%	99.3%	99.7%
Oklahoma	2.5%	1.6%	11.0%	6.5%	0.4%	0.1%	1.6%	0.8%	0.1%	0.0%	88.1%	92.5%
Oregon	3.9%	1.4%	1.3%	4.1%	1.2%	0.3%	0.1%	0.1%	0.2%	0.0%	97.8%	93.9%
Pennsylvania	1.0%	0.6%	0.2%	0.2%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	99.4%	99.6%
Rhode Island	0.8%	0.6%	0.0%	0.0%	0.9%	0.5%	1.2%	(D)	0.0%	0.0%	98.5%	100.0%
South Carolina	1.4%	0.8%	0.5%	0.2%	0.3%	0.2%	7.3%	4.0%	0.1%	0.0%	91.8%	95.6%
South Dakota	0.7%	0.8%	2.5%	7.8%	0.1%	0.0%	0.0%	0.0%	0.0%	(D)	97.7%	92.7%
Tennessee	1.3%	0.7%	0.4%	0.3%	0.2%	0.1%	1.4%	1.0%	0.0%	0.1%	98.0%	98.5%
Texas	11.3%	5.6%	0.9%	0.5%	0.4%	0.1%	3.2%	0.7%	0.1%	0.0%	95.5%	98.6%
Utah	2.3%	1.6%	3.9%	37.0%	0.4%	0.2%	0.0%	0.0%	0.1%	0.0%	95.8%	63.0%
Vermont	1.4%	1.2%	0.3%	0.2%	0.1%	0.0%	0.2%	0.3%	0.0%	0.0%	99.2%	99.0%
Virginia	1.4%	1.3%	0.3%	0.2%	0.4%	0.2%	2.9%	1.8%	0.1%	0.0%	96.4%	97.8%
Washington	5.4%	10.9%	1.2%	19.2%	1.4%	0.4%	0.2%	0.0%	0.2%	0.0%	97.1%	80.3%
West Virginia	1.2%	1.2%	0.2%	0.2%	0.2%	0.1%	0.1%	0.0%	0.0%	(D)	99.2%	99.3%
Wisconsin	0.7%	0.5%	0.2%	0.2%	0.5%	0.1%	0.1%	0.0%	0.0%	0.0%	99.4%	99.8%
Wyoming	2.6%	2.2%	1.3%	1.7%	0.1%	0.0%	0.1%	(D)	0.0%	(D)	98.5%	98.2%

Source: 2017 U.S. Census of Agriculture

Table 6. Average Income by Farm by Farming Activity and Race/Ethnicity (2017)

	AIAN		Asian		Black		NHPI		Hispanic		White	
	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$
All		\$ 58,885		\$ 406,669		\$ 39,928		\$ 163,776		\$ 252,267		\$ 193,132
Crops	29.8%	\$ 79,956	63.8%	\$ 367,152	35.9%	\$ 67,297	48.4%	\$ 207,320	40.4%	\$ 367,165	50.3%	\$ 191,478
Livestock, poultry, and products	55.3%	\$ 63,389	14.5%	\$1,082,108	51.4%	\$ 30,660	42.8%	\$ 148,288	46.7%	\$ 222,956	48.4%	\$ 200,023
Cattle and calves	34.6%	\$ 53,017	13.1%	\$ 46,068	39.8%	\$ 14,213	23.3%	\$ 47,196	28.9%	\$ 135,675	35.0%	\$ 110,740
Milk from cows	0.4%	\$ 790,752	0.3%	\$1,001,825	0.2%	\$ 389,065	0.8%	\$2,497,273	0.8%	\$4,158,111	2.0%	\$ 909,724
Poultry and Eggs	8.8%	\$ 122,049	14.5%	\$1,082,108	6.0%	\$112,053	11.4%	\$ 169,395	10.2%	\$ 207,894	8.1%	\$ 287,933

Source: Race, Ethnicity, Gender Profile, 2017, USDA. www.nass.usda.gov/AgCensus.

Table 7. Number of Loan Applications by Year, Race, and Ethnicity (2000-2020)

Year	Number							% Share					
	White	Black/African American	Asian	American Indian/Alaskan Native	Hawaiian/Pacific Islanders	Hispanic	Total	White	Black/African American	Asian	American Indian/Alaskan Native	Hawaiian/Pacific Islanders	Hispanic
2000	24548	1472	162	1015	43	693	26972	91.0%	5.5%	0.6%	3.8%	0.2%	2.6%
2001	25010	1432	185	1059	40	682	27460	91.1%	5.2%	0.7%	3.9%	0.1%	2.5%
2002	23903	1247	150	1145	50	714	26284	90.9%	4.7%	0.6%	4.4%	0.2%	2.7%
2003	23611	1277	119	1288	57	706	26157	90.3%	4.9%	0.5%	4.9%	0.2%	2.7%
2004	20148	1161	167	1163	280	804	22758	88.5%	5.1%	0.7%	5.1%	1.2%	3.5%
2005	21654	1420	175	1416	70	753	24526	88.3%	5.8%	0.7%	5.8%	0.3%	3.1%
2006	24840	954	197	1391	83	681	27213	91.3%	3.5%	0.7%	5.1%	0.3%	2.5%
2007	24611	874	218	1319	107	709	26843	91.7%	3.3%	0.8%	4.9%	0.4%	2.6%
2008	26667	1028	262	1729	89	1026	29466	90.5%	3.5%	0.9%	5.9%	0.3%	3.5%
2009	36240	1134	314	2240	92	1284	39650	91.4%	2.9%	0.8%	5.6%	0.2%	3.2%
2010	36077	1115	277	2442	92	1395	39592	91.1%	2.8%	0.7%	6.2%	0.2%	3.5%
2011	31542	1128	300	2472	118	1350	35131	89.8%	3.2%	0.9%	7.0%	0.3%	3.8%
2012	34506	1223	300	3086	78	1572	38585	89.4%	3.2%	0.8%	8.0%	0.2%	4.1%
2013	32116	1733	305	3203	109	1688	36813	87.2%	4.7%	0.8%	8.7%	0.3%	4.6%
2014	34006	1886	276	3644	127	1830	39174	86.8%	4.8%	0.7%	9.3%	0.3%	4.7%
2015	39728	2051	327	4250	134	2301	45612	87.1%	4.5%	0.7%	9.3%	0.3%	5.0%
2016	39254	1844	396	4479	123	2206	45183	86.9%	4.1%	0.9%	9.9%	0.3%	4.9%
2017	37292	1542	360	4126	145	2160	42599	87.5%	3.6%	0.8%	9.7%	0.3%	5.1%
2018	34905	1305	365	3765	156	1914	39724	87.9%	3.3%	0.9%	9.5%	0.4%	4.8%
2019	35254	1204	321	4122	144	1799	40118	87.9%	3.0%	0.8%	10.3%	0.4%	4.5%
2020	37787	1406	416	3895	144	1779	42918	88.0%	3.3%	1.0%	9.1%	0.3%	4.1%
Total	643699	28436	5592	53249	2281	28046	722778	89.1%	3.9%	0.8%	7.4%	0.3%	3.9%

Source: Direct Loan data provided by USDA

Table 8. Application Withdrawal Rates by Race, Ethnicity, and Year (2000-2020)							Difference between Whites and Minorities				
	White	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic
2000	17.6%	29.5%	23.0%	17.3%	41.9%	29.6%	11.9%	5.4%	-0.3%	24.3%	12.0%
2001	19.7%	30.0%	24.3%	19.0%	25.0%	37.0%	10.3%	4.6%	-0.7%	5.3%	17.3%
2002	20.0%	32.5%	36.7%	18.4%	30.0%	28.2%	12.5%	16.7%	-1.6%	10.0%	8.2%
2003	19.4%	34.1%	31.1%	22.8%	17.5%	33.3%	14.7%	11.7%	3.4%	-1.9%	13.9%
2004	19.2%	37.0%	31.1%	22.0%	3.9%	32.0%	17.8%	11.9%	2.8%	-15.3%	12.8%
2005	18.3%	45.7%	23.4%	20.7%	21.4%	36.1%	27.4%	5.1%	2.4%	3.1%	17.8%
2006	18.7%	31.9%	35.0%	21.4%	18.1%	31.1%	13.2%	16.3%	2.7%	-0.6%	12.4%
2007	19.3%	31.3%	31.7%	21.8%	15.9%	29.9%	12.0%	12.4%	2.5%	-3.4%	10.6%
2008	20.3%	33.5%	32.4%	20.5%	20.2%	29.4%	13.2%	12.1%	0.2%	-0.1%	9.1%
2009	21.2%	31.0%	31.5%	23.0%	13.0%	28.4%	9.8%	10.3%	1.8%	-8.2%	7.2%
2010	20.4%	30.1%	30.0%	20.9%	13.0%	28.5%	9.7%	9.6%	0.5%	-7.4%	8.1%
2011	20.4%	29.3%	31.3%	21.8%	21.2%	27.0%	8.9%	10.9%	1.4%	0.8%	6.6%
2012	20.1%	28.7%	34.3%	20.7%	16.7%	25.1%	8.6%	14.2%	0.6%	-3.4%	5.0%
2013	19.5%	27.6%	30.8%	18.8%	17.4%	25.5%	8.1%	11.3%	-0.7%	-2.1%	6.0%
2014	18.9%	30.1%	26.4%	15.9%	14.2%	26.6%	11.2%	7.5%	-3.0%	-4.7%	7.7%
2015	19.1%	30.2%	30.3%	16.5%	17.2%	24.3%	11.1%	11.2%	-2.6%	-1.9%	5.2%
2016	21.1%	33.4%	29.8%	18.9%	18.7%	24.7%	12.3%	8.7%	-2.2%	-2.4%	3.6%
2017	20.6%	34.2%	28.3%	18.3%	21.4%	25.7%	13.6%	7.7%	-2.3%	0.8%	5.1%
2018	20.8%	34.6%	31.8%	17.4%	23.1%	25.5%	13.8%	11.0%	-3.4%	2.3%	4.7%
2019	20.8%	33.8%	25.5%	18.2%	19.4%	24.8%	13.0%	4.7%	-2.6%	-1.4%	4.0%
2020	21.7%	42.9%	37.5%	17.5%	28.2%	30.5%	21.2%	15.8%	-4.2%	6.5%	8.8%

Source: Direct Loan data provided by USDA

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